

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL
WITH PROOF
OF SERVICE

77-1107

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee,

v.

GUSTAVO PASSARELLI,

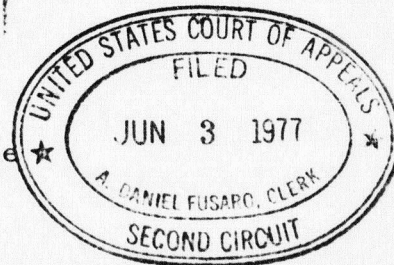
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

MORTON BERGER
Attorney for Defendant-Appellant
13 Eastbourne Drive
Spring Valley, New York 10977
(914) 524-6484

ROBERT B. FISKE, JR.
United States Attorney
Attorney for Plaintiff-Appellee
One St. Andrews Plaza
New York, New York 10007
(212) 791-0108



(6370)

PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

JUDGE-MAGISTRATE Assigned U.S. MO 10208 1 0857 OR Mis ☐ Disposition COPY Fee ☒ District Office (LAST, FIRST, MIDDLE)		vs. CLEARY, WILLIAM H.		Case Filed Mo. 10 Day 27 No. of Dets *03 JUVENILE ☐		76 0986 01 Yr Docket No. Det.	
U.S. TITLE/SECTION 18:371 18:656 18:1014 18:1005		OFFENSES CHARGED Conspiracy to commit bank fraud. Misapplication of bank funds Making false statements on loan application Making false entry in bank records		ORIGINAL COUNTS 1 2-8, 13-15 9-12 16		U.S. MAG. CASE NO. BAIL • RELEASE ☐ AMT ☐ Fugitive ☐ Denied ☐ Set ☐ Pers. Recog. ☐ PSA \$ 10 000 conditions ☐ Date ☐ 10% Deposit ☐ Surety Bond ☐ Bail Not Made ☐ Collateral ☐ Status Changed (See Docket) ☐ 3rd Ptry Cust ☐ Other	
II. KEY DATES & INTERVALS		SUPERSEDING COUNTS		SENTENCE Disposition of Charges 1-19-77 ☐ On All Charges ☒ On Lesser * Offense(s) ☐ Convicted ☐ Accuited ☐ Dismissed ☐ WOP: ☐ WP ☐ On Government's Motion			
ARREST or U.S. Custody Began High Risk Date Summons Served First Appearance		INDICTMENT ☒ Information 10-27-76 Indict Waived ☐ Superseding Indict Info ☐ In Charging District		ARRAIGNMENT 11-4-76 1st Plea 11-4-76 Final Plea		TRIAL Trial Set For 1-10-77 Voir Dire 1-10-77 Trial Began 1-10-77 Trial Ended 1-19-77 ☒ NG ☐ G ☐ NOL ☐ G. Plea ☐ W/Drawn	
Search Warrant Issued Return Summons Issued Served Arrest Warrant Issued COMPLAINT ☒ OFFENSE (In Complaint)		MAGISTRATE INITIAL/NO. INITIAL APPEARANCE DATE PRELIMINARY EXAMINATION OR REMOVAL HEARING Date Scheduled Date Held ☐ WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT		INITIAL/NO. OUTCOME: ☐ DISMISSED HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW:		Tape Number	

U.S. Attorney or Asst

Rick Weinberg
 Paul V. Carron, Jr.
 791-0006

ATTORNEYS

Defense ☐ CJA ☒ Ret. ☐ Waived ☐ Sett. ☐ None / Other ☐ PD ☐ OO

DANIEL H. MURPHY
200 E. 42nd Street
New York, New York 10017
Tel: 212-986-6272

* Show last names and suffix numbers of other defendants on same indictment/information.

Healy-02, Passarelli-03

DATE	(DOCUMENT NO.)	PROCEEDINGS
10-27-76		Filed Indictment.....Gagliardi, J.
11-4-76		Deft. (atty. Daniel H. Murphy) pleads not guilty. Bail fixed at \$10,000 unsecured PRB. Assigned to Carter, J. for all purposes.....Cooper, J.
11/9/76		Filed NOTICE OF APPEARANCE for deft; by Daniel H. Murphy of Cowan Liebowitz & Latman, 200 E. 42nd St. New York, N.Y. 10017 Tel: 212-986-6272.
11/11/76		Filed PRE-TRIAL CONFERENCE held. All motions are to be filed by 11/19/76. Another pretrial conference maybe scheduled if pre-trial matters can not be worked out. The case is set down for trial for 1/10/77 at 2:00 PM in courtroom 102. So ordered CARTER, J.
11-4-76		Filed appearance bond in the amount of \$10,000 unsecured
11-23-76		Filed Def't's NOTICE OF MOTION to dismiss indictment and for Brady Material.
11-23-76		Filed Def't's MEMORANDUM in support of motion to dismiss indictment.

EXCLUDABLE DELAY			
(a)	(b)	(c)	(d)

Continued on page 2

A TRUE COPY
RAYMOND R. BURCHARDT, Clerk

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

- v - :

WILLIAM H. CLEARY, :
JEROME F. HEALY, and :
GUSTAVO PASSARELLI, :

Defendants. :

----- x

INDICTMENT

76 Cr. 986

COUNT ONE

The Grand Jury charges:

INTRODUCTION

1. At all times relevant to this Indictment, Barclays Bank of New York (hereinafter referred to as "Barclays") was a bank, the deposits of which were insured by the Federal Deposit Insurance Corporation.

2. At all times relevant to this Indictment, Barclays had a branch office located at 491 Main Street, New Rochelle, New York.

3. At all times relevant to this Indictment, WILLIAM H. CLEARY (hereinafter referred to as "CLEARY"), the defendant, was assistant manager of Barclays' branch office located at 491 Main Street, New Rochelle, New York.

4. At all times relevant to this Indictment, JEROME F. HEALY (hereinafter referred to as "HEALY"), was an attorney.

5. At all times relevant to this Indictment, GUSTAVO PASSARELLI (hereinafter referred to as "PASSARELLI"), was owner and president of Westchester Avenue Marina, Inc., Westchester Avenue Used Cars, Inc., and 8626 Realty Corporation.

I. THE CONSPIRACY

6. From on or about September 1, 1975, up to and including the date of the filing of this Indictment, in the Southern District of New York, the defendants CLEARY, HEALY and PASSARELLI and others both known and unknown to the grand jury, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other, to commit offenses against the United States, to wit, violations of Title 18, United States Code, Sections 656 and 1014.

II. THE OBJECTS OF THE CONSPIRACY

7. It was part of said conspiracy that the defendants CLEARY, HEALY and PASSARELLI would and did use false statements, false signatures and other means to conceal from Barclays that the defendant PASSARELLI, who the defendants CLEARY, HEALY and PASSARELLI well knew had a bad credit rating at Barclays, was in fact the recipient of the proceeds of certain loans made by Barclays in the names of alleged borrowers other than the defendant PASSARELLI.

8. It was further part of said conspiracy that the defendants HEALY and PASSARELLI unlawfully, wilfully and knowingly would and did make false statements of material facts upon applications for loans, financial statements, notes and security agreements, for the purpose of influencing the action of Barclays upon applications, advances, loans, and changes and extensions of the same, and that the defendant CLEARY, being an officer and employee of Barclays, unlawfully, wilfully and knowingly would and did abstract and misapply the moneys, funds, and credits of Barclays, in amounts exceeding \$100.

III. THE MEANS BY WHICH THE
CONSPIRACY WAS CARRIED OUT.

9. Among the means by which the defendants and their co-conspirators would and did carry out the said conspiracy were the following:

(a) From on or about September 1, 1976, up to and including approximately January 31, 1976, the defendants HEALY and PASSARELLI, would and did apply for, and the defendant CLEARY would and did approve and authorize, loans from Barclays in the names of alleged borrowers other than the defendant PASSARELLI, the proceeds of which loans were to be received by the defendant PASSARELLI, when the defendants CLEARY, HEALY and PASSARELLI well knew that the defendant PASSARELLI had a bad credit rating at Barclays.

(b) The loans referred to in paragraph 9(a) of this Indictment would be and were made in the names of different alleged borrowers and would be and were each made in the amount of \$5000, which the defendants CLEARY, HEALY and PASSARELLI well knew was the maximum amount that the defendant CLEARY was authorized by Barclays to lend to any one customer without obtaining the approval of other officers at Barclays.

(c) The defendants HEALY and PASSARELLI would and did submit to the defendant CLEARY applications for loans, financial statements, notes and security agreements so that the loans referred to in paragraph 9(a) of this Indictment would appear to be regularly and properly made. The applications for loans, financial statements, notes and security agreements contained false statements of material facts or bore false signatures of the alleged borrowers. The defendant CLEARY did not verify the accuracy of said statements, and he never

(d) The defendant CLEARY would and did approve and authorize certain of the loans referred to in paragraph 9(a) of this Indictment without having received an application for a loan or a financial statement signed by the alleged borrower.

(e) The defendant CLEARY would and did give all Barclays bank money orders representing the proceeds of the loans referred to in paragraph 9(a) of this Indictment to the defendant HEALY, rather than to the alleged borrowers, and the defendant HEALY would and did give said bank money orders to the defendant PASSARELLI.

OVERT ACTS

10. The following overt acts, among others, were committed in the Southern District of New York in furtherance of said conspiracy:

(a) On or about September 26, 1975, the defendant CLEARY gave to the defendant HEALY a Barclays bank money order in the amount of \$5000 and payable to Mary Roccario.

(b) On or about September 26, 1975, the defendant HEALY gave to the defendant PASSARELLI a Barclays bank money order in the amount of \$5000 and payable to Mary Roccario.

(c) On or about October 22, 1975, the defendant CLEARY gave to the defendant HEALY a Barclays bank money order in the amount of \$5000 and payable to 8626 Realty Corporation.

(d) On or about October 22, 1975, the defendant HEALY gave to the defendant PASSARELLI a Barclays bank money order in the amount of \$5000 and payable to 3626 Realty Corporation.

(e) On or about October 27, 1975, the defendant CLEARY gave to the defendant HEALY a Barclays bank money order in the amount of \$5000 and payable to Westchester Avenue Marina, Inc.

(f) On or about October 27, 1975, the defendant HEALY gave to the defendant PASSARELLI a Barclays bank money order in the amount of \$5000 and payable to Westchester Avenue Marina, Inc.

(g) On or about November 12, 1975, the defendant CLEARY gave to the defendant HEALY a Barclays bank money order in the amount of \$5000 and payable to Carl French.

(h) On or about November 12, 1975, the defendant HEALY gave to the defendant PASSARELLI a Barclays bank money order in the amount of \$5000 and payable to Carl French.

(i) On or about November 13, 1975, the defendant CLEARY gave to the defendant HEALY a Barclays bank money order in the amount of \$5000 and payable to Joseph Passarelli.

(j) On or about November 14, 1975, the defendant HEALY gave to the defendant PASSARELLI a Barclays bank money order in the amount of \$5000 and payable to Joseph Passarelli.

(k) On or about November 25, 1975, the defendant CLEARY gave to the defendant HEALY a Barclays bank money order in the amount of \$5000 and payable to Thomas Powers.

(l) On or about November 25, 1975, the defendant HEALY gave to the defendant PASSARELLI a Barclays bank money order in the amount of \$5000 and payable to Thomas Powers.

(m) On or about December 15, 1975, the defendant CLEARY gave to the defendant HEALY a Barclays bank money order in the amount of \$5000 and payable to Westchester Avenue Used Cars, Inc.

(n) On or about December 15, 1975, the defendant HEALY gave to the defendant PASSARELLI a Barclays bank money order in the amount of \$5000 and payable to Westchester Avenue Used Cars, Inc.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH EIGHT

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts 2 through 8, in the Southern District of New York, WILLIAM H. CLEARY, the defendant, being then an officer and employee of the Barclays Bank of New York, 491 Main Street, New Rochelle, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, did unlawfully, wilfully and knowingly abstract and misapply the moneys, funds and credits of said bank in amounts exceeding \$100, to wit, the amounts hereinafter set forth in each of Counts 2 through 8, by approving and authorizing the loans hereinafter described in Counts 2 through 8.

2. On or about the dates hereinafter set forth in Counts 2 through 8, in the Southern District of New York, JEROME F. HEALY and GUSTAVO PASSARELLI, the defendants, did unlawfully, wilfully and knowingly aid, abet, counsel, command, induce and procure WILLIAM H. CLEARY, the defendant, to commit offenses against the United States set forth in the preceding paragraph and in Counts 2 through 8.

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<u>COUNT</u>	<u>DATE</u>	<u>ALLEGED BORROWER</u>	<u>AMOUNTS ABSTRACTED AND MISAPPLIED</u>
1	September 26, 1975	Mary Roccario	\$5000
3	October 22, 1975	8026 Healy Corporation	\$5000
4	October 27, 1975	Westchester Avenue Marina, Inc.	\$5000
5	November 12, 1975	Carl French -	\$5000
6	November 13, 1975	Giuseppe Passarelli	\$5000
7	November 25, 1975	Thomas Powers -	\$5000
8	December 15, 1975	Westchester Avenue Used Cars, Inc.	\$5000

(Title 18, United States Code, Sections 656 and 2.)

COUNTS NINE THROUGH TWELVE

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts 9 through 12, in the Southern District of New York, WILLIAM H. CLEARY, JEROME F. HEALY and GUSTAVO PASSARELLI, the defendants, unlawfully, wilfully and knowingly did make false statements of material facts upon applications for loans and financial statements for the purpose of influencing the action of Barclays Bank of New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, upon applications, advances, loans, and changes and extensions of the same.

<u>COUNT</u>	<u>DATE</u>	<u>NAME OF BORROWER ON LOAN APPLICATION OR FINANCIAL STATEMENT</u>	<u>AMOUNT OF LOAN</u>
9	September 26, 1975	Mary Roccario	\$5000
10	October 22, 1975	Carminc Liberatore	\$5000
11	November 12, 1975	Carl French	\$5000
12	November 25, 1975	Thomas Powers	\$5000

(Title 18, United States Code, Sections 1014 and 2.)

COUNTS THIRTEEN THROUGH FIFTEEN:

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts 13 through 15, in the Southern District of New York, WILLIAM H. CLEARY, the defendant, being then an officer and employee of the Barclays Bank of New York, 491 Main Street, New Rochelle, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, did unlawfully, wilfully and knowingly abstract and misapply the moneys, funds and credits of said bank in amounts exceeding \$100, to wit, the amounts hereinafter set forth in each of Counts 13 through 15, by approving the loans hereinafter described in Counts 13 through 15.

2. On or about the dates hereinafter set forth in Counts 13 through 15, in the Southern District of New York, JEROME F. BEALY, the defendant, did unlawfully, wilfully and knowingly aid, abet, counsel, command, induce and procure WILLIAM H. CLEARY, the defendant, to commit offenses against the United States set forth in the preceding paragraph and in Counts 13 through 15.

<u>COUNT</u>	<u>DATE</u>	<u>ALLEGED BORROWER</u>	<u>AMOUNT ABSTRACTED AND MISAPPLIED</u>
13	October 9, 1975	Jerome Healy	\$5000
14	December 9, 1975	Edward R. Hogan	\$5000
15	December 12, 1975	Margaret Fletcher	\$5000

(Title 18, United States Code, Sections 656 and 2.)

COUNT SIXTEEN

The Grand Jury further charges:

1. On or about October 10, 1975, in the Southern District of New York, WILLIAM H. CLEARY (hereinafter referred to as "CLEARY"), the defendant, being an officer, agent and employee of Barclays Bank of New York, 491 Main Street, New Rochelle, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, unlawfully, wilfully and knowingly, and with intent to injure and defraud said bank, and to deceive officers of said bank, did make and cause to be made false entries in the books, reports and statements of said bank in that, when the Installment Loan Department of Barclays bank of New York rejected an installment loan in the amount of \$5000 to JEROME F. HEALY (hereinafter referred to as "HEALY"), the defendant, the proceeds of which loan the defendant CLEARY had already given to the defendant HEALY, the defendant CLEARY changed said installment loan to a time loan and back-dated the note for the time loan to the date on which the defendant CLEARY had given the defendant HEALY the proceeds of said installment loan.

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2. On or about October 10, 1975, in the Southern District of New York, the defendant HEALY did unlawfully, wilfully and knowingly aid, abet, counsel, command, induce and procure the defendant CLEARY to commit the offenses against the United States set forth in the preceding paragraph.

(Title 18, United States Code, Sections 1605 and 2.)

FORWARDED

ROBERT D. FISKE, JR.
United States Attorney

1 gwpdv

2 UNITED STATES OF AMERICA

3 vs.

76 Cr. 986

4 WILLIAM H. CLEARY, JEROME F.
5 HEALY and GUSTAVO PASSARELLI6 January 11, 1977
12:40 a.m.7
8 (Trial resumed, jury not present.)9 MR. MURPHY: I would like to hand in the orig-
10 inal of the memorandum and voir dire request. I served it
11 on counsel yesterday morning and I forgot to hand it in
12 and make it part of the record in this case.13 THE COURT: I have the Government's requests,
14 and I would like to have the requests from the defendants
15 by tomorrow.

16 Bring in the jury.

17 (The jury enters the courtroom.)

18 THE COURT: All right, Mr. Weinberg, call
19 your first witness.20 MR. WEINBERG: The Government calls Edward
21 Flanagan.22 E D W A R D C. F L A N A G A N, called as a
23 witness by the Government, being first duly sworn,
24 testified as follows:

25 DIRECT EXAMINATION

1 gwpdv

Flanagan - direct

2 BY MR. WEINBERG:

3 Q Mr. Flanagan, let me ask you to make sure you
4 keep your voice up so all the members of the jury can hear
5 you.

6 Mr. Flanagan, Where are you employed?

7 A At Barclay's Bank of New York.

8 Q And how long have you been employed with the
9 bank?

10 A Twenty six years.

11 Q And what position do you hold with the bank
12 today?

13 A I am a Vice President and Senior Regional Loan
14 Officer.

15 Q Were you employed at another branch of the
16 Barclay's Bank in September of 1975?

17 A Yes.

18 Q And what branch were you employed at?

19 A 491 Main Street Branch in New Rochelle, New
20 York.

21 Q And what was your position at that branch?

22 A Vice President and Manager.

23 Q Do you know an individual named William Cleary?

24 A Yes.

25 Q Was Mr. Cleary employed at the branch that you

1 gwpdv

Flanagan - direct

[14]

2 managed in September of 1975?

3 A Yes, I was.

4 Q What position did Mr. Cleary hold with the bank
5 in September of 1975?6 A He was assistant manager of the branch at 491
7 Main Street.8 Q And did he hold that position through December
9 of 1975?

10 A Yes, he did.

11 Q Mr. Flanagan, during September through December
12 of 1975, did Mr. Cleary have a limit on the amount of a loan
13 he could approve without getting the approval of another
14 bank officer?

15 A Yes, he did.

16 Q And what was that limit?

17 A Five thousand dollars.

18 Q If he wanted to approve a loan in excess of
19 five thousand dollars, what would he have to do?20 A He would have to present it to another loan
21 officer who had sufficient authority to approve it.22 Q Under bank procedure, as you understood it in
23 the fall of 1975, if Mr. Cleary had a loan limitation of
24 five thousand dollars, could he, according to bank procedure,
25 approve more than one \$5,000 loan to the same individual?

1

gwpdv

Flanagan - direct

2

A No.

3

MR. MURPHY: Objection.

4

THE COURT: The question has been answered.

5

Q Mr. Flanagan, based on your experience at a bank and based on your experience as the manager of that branch in the fall of 1975, did it violate bank procedures to lend money without talking to the person who was named as the borrower on the bank application?

10

MR. MURPHY: Objection.

11

MR. WEINBERG: I think it is relevant and Mr. Flanagan has personal knowledge of the facts.

13

THE COURT: I suppose the objection is that -- your first question ought to be what the procedures are and allow him to tell us what they are. That way you can get an answer to your question.

17

MR. WEINBERG: Thank you, your Honor.

18

19

20

21

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25

Q Mr. Flanagan, if an individual wanted to borrow money from Barclay's Bank in the fall of 1975, what

* * *

* * *
Flanagan - direct

[24]

1 gwpdv

2 correct?

3 A The note is retained by the bank.

4 Q But is it signed at the time that the check is
5 given to the borrower?

6 A It is signed prior to the check being given.
7 Normally the note would be signed and within a few minutes
8 after that the check would be given to the borrower.

9 Q Mr. Flanagan, let me direct your attention to
10 around December 21 and 22 or 1975.

11 Did you have a conversation with Mr. Cleary
12 concerning certain loans that he had approved?

13 A Yes.

14 Q Do you recall where that conversation took place?

15 A It took place in the bank building at 491 Main
16 Street in New Rochelle.

17 Q Do you recall who else was present?

18 A The Executive Vice President of the bank was
19 present.

20 Q What is his name, please?

21 A Keith Fulsher.

22 Q Who else was present, as you recall?

23 A A member of our general counsel law firm, an
24 attorney. His name is Robert McGoey.

25 Q Anyone else present that you recall?

1 gwpdv

Flanagan - direct

2 A Not while I was present.

3 Q Mr. Flanagan, to the best of your recollection,
4 tell us the substance of what each participant in this
5 conversation said.

6 MR. BERGER: Objection, your Honor. At this
7 time I ask for a limiting instruction.

8 THE COURT: All right. I gather from the ques-
9 tion, ladies and gentlemen, that Mr. Cleary was present at the
10 conversation, but Mr. Passarelli was not. At least for
11 your present purposes you are not to take, in connection
12 with any defendant, any conversation that was held out of
13 his presence. You hear this conversation only with regard
14 to Mr. Cleary, not in regard to Mr. Passarelli.

15 I may at some future time give you different
16 instructions, but you follow these until I possibly make a
17 change.

18 Q Relate the conversation as you recall it, trying
19 to identify the best you can which participant in the con-
20 versation said what.

21 A This meeting went on for more than an hour. The
22 best I could hope today would be to try to summarize. I
23 certainly couldn't remember verbatim everything about the
24 conversation.

25 The meeting was called because we had become

1 gwpdv

Flanagan - direct

2 aware of the fact that Mr. Cleary had disbursed loan pro-
3 ceeds by means of bank checks prior to placing the loans
4 on our books, which is against bank procedure. As soon as
5 the check is issued and the proceeds of a loan are dis-
6 bursed, that particular loan should be immediately put on
7 the bank book.

8 We had discovered that Mr. Cleary had issued
9 several checks and did not, shall we say, book the loan or
10 put the loan on the bank books until several days after-
11 wards.

12 We asked him why he was making these loans.

13 We also discovered at that time that some of
14 these loans were made to either an individual or a corpor-
15 ation controlled by an individual with whom we had had
16 certain credit problems in the past.

17 Q Who was that individual?

18 A That was Mr. Passarelli.

19 Q Continue to relate the conversation as you
20 recall it.

21 Q As I said, the conversation continued for well
22 over an hour, and Mr. Cleary's reply to our question was
23 that he was making these loans and fully expected that they
24 would all be repaid. We had serious doubts about whether
25 they would be repaid or not.

* * *

* * *
Flanagan - direct

[31]

gwpdv

1
2 Q In what individual's names did you find TRW's?

3 A I remember one in the name Jerome Healy.

4 Q Mr. Flanagan, I am showing you what has prev-
5 iously been marked as Government's 47 for identification.
6 Would you please identify Government's 47?

7 A This is a charge-off loan report. This is the
8 type of report that is made out when the bank has reached
9 the point where they cannot collect the loan and therefore
10 must write it off as a loss.

11 Q Is that a Xerox copy of the original document?

12 A Yes.

13 Q Is this the original document?

14 A This is a carbon of the original.

15 Q Is Government's 47 a charge-off report prepared
16 by the bank in the regular course of its business?

17 A Yes, it is.

18 Q Is it part of the regular course of the bank's
19 business to prepare Government's 47, the charge-off loan
20 report?

21 A Yes.

22 MR. WEINBERG: I offer into evidence Government's
23 47, copies of which have already been provided
24 defense counsel.

25 MR. MURPHY: No objection.

gwpdv

Flanagan - direct

MR. BERGER: No objection, your Honor.

(Charge-off loan report, Government's 47 for identification, received in evidence.)

Q Would you please tell us in whose name Government's 47, the charge-off report, is in, the name of the borrower?

A Thomas Powers and Carol Ann Powers.

Q I now show you what has been marked for identification as Government's 49, and ask you to identify it, please.

A This is another charge-off loan report. This one is in the name of 8626 Realty Corporation.

Q And is Government's 49 prepared by the bank in its ordinary course of business?

A Yes.

Q Is it part of the banks' ordinary course of business to prepare the charge-off loan report?

A When a loan reaches the point where we consider it uncollectible, yes.

MR. WEINBERG: I offer into evidence Government's 49.

MR. MURPHY: No objection.

MR. BERGER: No objection.

(Government's Exhibit 49 for identification

1 gwpdv

Flanagan - direct

2 received in evidence.)

3 Q What is the borrower name on Government's 49?

4 A 8626 Realty Corporation.

5 Q I show you what has previously been marked
6 for identification as Government's 50, and I ask you if you
7 can identify that.

8 A This is another charge-off loan report.

9 Q Is that document, Government's 50, prepared by
10 the bank in the ordinary course of business?

11 A Yes.

12 Q And is it part of the ordinary course of the
13 bank's business to prepare that document?

14 A Yes.

15 MR. WEINBERG: I offer into evidence Govern-
16 ment's 50, which has been previously shown to counsel.

17 MR. MURPHY: No objection.

18 MR. BERGER: No objection.

19 (Government Exhibit 50 for identification

20 received in evidence.)

21 Q Mr. Flanagan, would you please tell us in whose
22 name Government's 50, the charge-off loan report, is in?

23 A Westchester Avenue Marina, Inc.

24 Q I show you what has been marked for identifi-
25 cation as Government's 51 and ask you to identify that,

XXX

1 gwpdv

2 please.

3 A This is another charge-off loan report.

4 Q Is Government's 51 prepared by the bank in the
5 ordinary course of business?

6 A Yes, it is.

7 Q And is it part of the bank's business to prepare
8 Government's 51, the charge-off loan report?

9 A Yes.

10 MR. WEINBERG: I offer into evidence Govern-
11 ment's 51.

12 MR. MURPHY: No objeciton.

13 MR. BERGER: No objection.

14 (Government's Exhibit 51 for identification
15 received in evidence.)

16 Q In whose name, Mr. Flanagan, is Government's 51,
17 the charge-off report?

18 A Carl French.

19 Q I show you Government's 52 for identification
20 and I ask you again, is Government's 52 prepared in the
21 ordinary course of the bank's bsuiness?

22 A Yes.

23 Q And is it part of the bank's business to prepare
24 that document?

25 A Yes.

1 gwpdv

Flanagan - direct

2 MR. WEINBERG: I offer into evidence Govern-
3 ment's 52.

4 MR. BERGER: No objection.

5 MR. MURPHY: No objection.

6 (Government Exhibit 52 for identification
7 received in evidence.)

XXX

8 Q In whose name is Government's 52?

9 A Giuseppi Passarelli.

10 Q Let me show you what has been marked for identi-
11 fication as Government's 53, 54 and 55. Please identify
12 what those documents are.

13 A Three more charge-off loan reports.

14 Q And are each of those documents prepared
15 by the bank in the ordinary course of the bank's business?

16 A Yes, they are.

17 Q Is it part of the bank's business to prepare
18 those documents?

19 A Yes.

20 MR. WEINBERG: I offer into evidence Govern-
21 ment's 53, 54, and 55.

22 MR. BERGER: No objection.

23 MR. MURPHY: No objection, your Honor.

24 (Government Exhibits 53, 54 and 55 for identi-
25 fication received in evidence.)

1 gwpdv

Flanagan - direct

[37]

2 Q Mr. Flanagan, please tell us in whose names
3 the charge-off report is in, Government's 53.

4 A One is in the name of Westchester Avenue Used
5 Cars, Inc.

6 Q Government's 54, please?

7 A Another one in the name of Jerome F. Healy.

8 Q And Government's 55, please?

9 A And the final one in the name of Edward H. Hoga.

10 THE COURT: Ladies and gentlemen, I recognize
11 that it is very tiring sitting for long periods and there-
12 fore during lulls like this if you feel you want to get
13 up and stretch and get some circulation, please feel free
14 to do so.

15 Q Mr. Flanagan, I have put before you Government's
16 49-A through 55-A, inclusive, and Government's 56. Can you
17 tell us what those documents are?

18 A These are commercial loan customer history
19 statements.

20 Q And are these documents prepared by the bank
21 in the ordinary course of its business?

22 A Yes, they are.

23 Q And is it part of the banks' ordinary business
24 to prepare these documents?

25 A Yes.

gwpdv

Flanagan - direct

1
2 MR. WEINBERG: The Government offers into
3 evidence Exhibits 49-A through 55-A and Government's 56,
4 copies of which have already been provided defense counsel.

5 MR. BERGER: No objection.

6 MR. MURPHY: That's Government's 49-A through
7 55, inclusive, and Government's 56?

8 MR. WEINBERG: That's correct.

9 MR. MURPHY: No objection.

10 (Government Exhibits 49-A through 55-A and

11 Government Exhibit 56 received in evidence.)

12 Q Mr. Flanagan, I am taking one of these as an
13 example, Government's 55-A. There is a column there which
14 says "Principal Payments" and is there a figure under
15 "Principal Payments"?

16 A \$5,000 is the one I have in front of me.

17 Q Under what circumstances would that figure
18 appear on the customer history statement?

19 A When the loan was -- in as much as this was a
20 \$5,000 loan, when the loan was extinguished either by pay-
21 ment by the borrower or, in this particular case, when it
22 was charged off by the bank or written off as a loss.

23 Q And is it true Government's 55, which is the
24 charge-off loan report, shows that particular loan was
25 charged off as a bad debt by the bank?

* * *

* * *
Flanagan - cross

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1 gwpdv

2 case?

3 MR. BERGER: The Government's indictment states--

4 THE COURT: Don't tell me what the Government
5 states. You tell me what you are stating.

6 MR. BERGER: It goes to show Mr. Passarelli
7 did not have bad credit with the bank and had no reason to
8 hide himself from the bank as stated in the --

9 THE COURT: That is beside the point, isn't it?

10 MR. BERGER: That is what the indictment states.
11 That is an allegation.

12 THE COURT: That is beside the point. I don't
13 believe that is the essence of the charge. The essence of
14 the charge is that he was loaning money and somebody else's
15 name was used. That is the essence of the charge.

16 In any event, it seems to me that we are going
17 far afield. So I am closing off that area of inquiry.

18 MR. BERGER: Your Honor, I except to that.

19 THE COURT: Of course. Nonetheless I am closing
20 it off.

21 MR. BERGER: May I make a pro offer on that?

22 THE COURT: At five o'clock, you and Mr.
23 Murphy can make all the offers you wish after the jury has
24 gone home.

25 Q Mr. Flanagan, Government Exhibit 49 is a charge-

1 gwpdv

Flanagan - cross

2 off loan report for 8626 Realty Corporation and it is dated
3 February 24 --

4 THE COURT: I think if you are going to ask him
5 something about an exhibit, the least you can do is give
6 it to him. Are you going to ask him something on the
7 exhibit?

8 MR. BERGER: Yes, I am.

9 THE COURT: You had better give him the exhibit
10 so he can answer you.

11 Q What date was that loan charged off?

12 A If we could refer to that schedule, I could give
13 you the exact date. I can tell from here it was on or
14 about February 20th, but that summary schedule should have
15 the exact date that it was charged off.

16 THE COURT: That is Exhibit D.

17 (Document handed to the witness.)

18 A February 26, 1976.

19 Q And does the charge-off report show who decided
20 to charge off that loan?

21 A Who decided?

22 Q Yes.

23 A It was a decision of the bank's management that
24 it should be charged off.

25 Q When you say it is a decision of the bank's

gwpdv

Flanagan - cross

[64]

1 management, do you hold a meeting? Is there a meeting
2 held of various individuals?
3

4 A In this particular case, there was a discussion
5 about this, yes.

6 Q And did you have a report to show whether that
7 particular corporation had any assets?

8 A A report?

9 Q Did you check to determine whether that corpora-
10 tion had any assets?

11 A This corporation -- well, let me say this.
12 We had Mr. Passarelli come in to discuss this entire matter
13 as to what his intentions were as to repayment. That
14 was after Mr. Cleary had worked one month full time in
15 endeavoring to collect these loans.

16 Mr. Passarelli indicated that he had some collat-
17 eral to offer us in the form of a forklift truck, and I
18 believe some boats, and that he would give us a security
19 interest in these and that he would make some sort of
20 arrangements for repayment.

21 Q Did you ask Mr. Passarelli whether that particu-
22 lar corporation, 8626 Realty Corporation, had any assets?

23 A This particular corporation, I believe, had
24 just had some property that was foreclosed, some real estate.

25 Q Was it foreclosed or was there a possibility of

1 gwpdv

2 foreclosure, do you know?

3 MR. WEINBERG: Your Honor, I don't see the
4 relevance of this line of questioning, these reasons as to
5 why the bank charged off the loans.

6 THE COURT: I think I agree with that. I am
7 sorry. I agree with that. I was trying to go over in my
8 mind some basis on which Mr. Berger could continue, but
9 I am afraid I find none.

10 The objection is sustained.

11 Q Did 8626 Realty Corporation deny liability to
12 the bank?

13 A No.

14 Q Did Westchester Avenue Marina, Inc. deny the
15 liability to the bank?

16 MR. WEINBERG: Objection, your Honor.

17 THE COURT: Objection sustained.

18 Q Did Carl French deny liability to the bank?

19 MR. WEINBERG: Objection, your Honor.

20 THE COURT: Sustained.

21 MR. BERGER: I would like to make a pro offer.

22 THE COURT: Five o'clock.

23 Q Did Giuseppe Passarelli deny liability to the
24 bank?

25 MR. WEINBERG: Objection.

1 gwpdv

2 THE COURT: Sustained.

3 Q Did Westchester Avenue Used Cars, Inc. deny the
4 liability to the bank?

5 MR. WEINBERG: Objection.

6 THE COURT: I am going to sustain it and in
7 order to save us time, let's assume that you have asked
8 the same question with regard to all of the other counts
9 that are in issue here and that the objections have been
10 made and I have sustained the objections.

11 Let's proceed.

12 Q Did Westchester Avenue Marina repay the loan?

13 MR. WEINBERG: Objection, your Honor.

14 THE COURT: Isn't the issue that the bank didn't
15 get its money back?

16 MR. WEINBERG: On many of the loan it did not,
17 your Honor, that is true.

18 THE COURT: How long do you think this will
19 be? I think I had better give a recess. Are you going to
20 be some time?

21 MR. BERGER: I might be --

22 THE COURT: What we had better do is take an
23 afternoon recess.

24 (Recess.)

25 (Continued on page 67.)

1 gwpdv

2 (Jury not present.)

3 MR. WEINBERG: Your Honor, I have a matter I
4 want to raise about a juror. I think I have it correct,
5 the facts.

6 Mr. Healy informs me that he believes that the
7 woman alternate juror may well be the sister of Mr. Healy's
8 deceased brother-in-law. Mr. Healy, about a year and a half
9 ago pleaded guilty to a bank embezzlement in this court.
10 The person who was involved in that bank embezzlement was
11 his brother-in-law, who died, and by his death that is
12 basically how the scheme fell apart. This is my under-
13 standing. The FBI found out about it and Mr. Healy -- it
14 was discovered Mr. Healy had committed a crime to which
15 he pleaded guilty.

16 He can't be one hundred percent positive about
17 that woman, but he is reasonably certain.

18 THE COURT: What was his brother-in-law's name?

19 MR. WEINBERG: Peter Mucci. He said he believes
20 she may be the sister of Mr. Mucci.

21 THE COURT: We are not going to reach Mr. Healy
22 today, are we?

23 MR. WEINBERG: He is the next witness, your
24 Honor.

25 (Mrs. Jean Frey enters the courtroom.)

gwpdv

Flanagan - cross

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THE COURT: Mrs. Frey, we have a witness here, and you have heard the name Healy mentioned. The question has come up as to whether you know him. Did you have a brother named Peter Mucci?

MRS. FREY: Yes. I don't think it will have any relevance to the case.

THE COURT: But that Mr. Healy is Mr. Mussi's-- was Mr. Mucci's brother-in-law?

MRS. FREY: Yes.

THE COURT: That is what we had to find out. Thank you very much. I have to decide now what he will do. He is going to be a witness in this case.

MRS. FREY: I don't see him that often. In fact, I never see him.

THE COURT: How long since you have seen him?

MRS. FREY: Since the funeral, about four years ago.

THE COURT: Do you think you would be able to evaluate his testimony objectively?

MRS. FREY: Yes.

(Mrs. Frey leaves the courtroom.)

MR. MURPHY: I have to object to that juror for cause.

MR. BERGER: I join in that objection, your

1 gwpdv

2 Honor.

3 MR. WEINBERG: Your Honor, the juror indicated
4 she did not think that would affect her judgment in the
5 case.

6 THE COURT: What was the nature of Mr. Healy's
7 relationship with the brother-in-law?

8 MR. WEINBERG: Your Honor, my understanding is
9 that it was a form of a check-kiting scheme. It was some-
10 thing of a check-kiting scheme that Mr. Healy got in-
11 volved in with Mr. Mucci, Mr. Healy's brother-in-law. Appar-
12 ently when Mr. Mucci died the scheme blew open, so to speak,
13 and Mr. Healy's participation in the scheme was discovered
14 by the authorities at that point.

15 I don't know whether or not the Government was
16 investigating that scheme while Mr. Mucci was alive. I am
17 led to believe it was not. The Government had no knowledge
18 about any illegal scheme until Mr. Mucci died, and at that
19 point Mr. Mucci was unable to make good on certain checks.

20 THE COURT: I will think about it. Bring the
21 jury in. I will think about it. She's an alternate juror,
22 in any event.

23 MR. WEINBERG: Yes, she is, your Honor.

24 (The jury enters the courtroom.)

25 THE COURT: All right, Mr. Berger.

gwpdv

Flanagan - cross

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CROSS EXAMINATION CONTINUED

BY MR. BERGER:

Q I think my last question was whether Westchester Avenue Marina had paid its debt to the bank. What was your answer to that?

A The Westchester Avenue Marina debt was paid, yes.

Q Do you know whether Giuseppe Passarelli contacted the bank and offered to pay off -- make payment on that debt?

MR. WEINBERG: Objection, your Honor.

THE COURT: Sustained.

MR. BERGER: Your Honor, I would ask the same question with regard to each and every individual and company.

THE COURT: I haven't barred your asking as to which of those companies the debt was paid. I haven't barred that. The question I am barring is the question you have asked him, as to whether Mr. Passarelli offered to make good on the debt.

MR. BERGER: Yes, your Honor, I realize that. I would again state I would ask the same question with regard to each of the borrowers and I would also ask that question whether the offers were made prior to the time

1 gwpdv

Flanagan - cross

2 that the indictment came down or there was a Grand Jury
3 in this case.

4 THE COURT: I don't know what you are asking.
5 You said you are going to ask that question as to each of
6 the borrowers. That question I have barred.

7 MR. BERGER: I didn't hear you.

8 THE COURT: You said you were going to ask that
9 question as to each of the borrowers. I don't know where
10 we are now. What is it you are talking about?

11 MR. BERGER: For example --

12 THE COURT: No. There are only two questions:
13 One, did a particular borrower pay back the loan? Are you
14 going to ask that question?

15 MR. BERGER: Yes.

16 THE COURT: I haven't barred that question.

17 Secondly, did Mr. Passarelli make an offer to
18 the bank to pay back the loan or stand good on the loan?

19 MR. BERGER: I didn't ask that question.

20 THE COURT: What question did you ask?

21 MR. BERGER: I asked whether Mr. Guiseppi
22 Passarelli, not whether Mr. Gustavo Passarelli.

23 THE COURT: Mr. Guiseppi Passarelli. Then the
24 objection is doubly sustainable if that was the question.

25 In any event, Mr. Passarelli, did he offer to

1 gwpdv

2 pay back the loan, I will sustain an objection to any ques-
3 tion of that kind, so you can assume you have asked them
4 all. The Government has objected; I have sustained it.

5 You may ask him which of these people paid the
6 loan back.

7 Q Has the loan been -- is the loan to Mary Roccario
8 being paid back?

9 A The loan to Mary Roccario is two months delin-
10 quent, but the payments -- payments are being made and
11 it is being paid back, but understand it is two months
12 delinquent.

13 Q As of what date is it two months delinquent?

14 A As of January 7, it was delinquent for the
15 November 25th and December 25th, 1976 installments.

16 MR. BERGER: May I be excused one moment, your
17 Honor?

18 (Pause)

19 Q Do you have a record of a payment as of this
20 Monday morning, the past Monday morning, bringing the
21 account up to date?

22 A You mean yesterday?

23 Q Yes.

24 A I don't have any record. In other words, I
25 cannot tell you whether a payment was made yesterday or

* * *

gwpdv

* * *

MR. MURPHY: Although I hope for the best I fear the other. I have my client's interest at heart.

THE COURT: Okay.

(In open court:)

THE COURT: Mrs. Frey, come up here, please.

(At the bench with Mrs. Frey:)

THE COURT: I am sorry I didn't know about this earlier, but I think under the circumstances in view of the connection and so forth it is best that you not sit. He is going to be the next witness. So I think you had better be excused.

(In open court:)

THE COURT: Call your next witness.

MR. WEINBERG: The Government calls Jerome Healy.

J E R O M E F. H E A L Y, a defendant, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WEINBERG:

Q Mr. Healy, let me ask you to make sure you speak in a very loud voice so all the members of the jury can hear you.

Mr. Healy, what is your occupation?

A I am an attorney.

gwpdv

Healy - direct

1

2

Q Have you ever been convicted of a crime?

3

A Yes, I have.

4

Q When were you convicted of that crime?

5

A In August of 1975.

6

Q And what crime were you convicted of?

7

A Aiding and abetting in a bank embezzlement.

8

Q And when were you sentenced in connection with

9

that conviction?

10

A October 31, 1975.

11

Q Mr. Healy, have you been named as a defendant in

12

this case?

13

A Yes, I have.

14

Q And have you entered a guilty plea in this

15

case?

16

A Yes, I have.

17

Q Prior to your entry of a guilty plea --

18

MR. MURPHY: Your Honor, excuse me. May I have a limiting instruction as to the effect of his entry of a plea on the other defendants in this case?

20

21

THE COURT: You may.

22

Mr. Healy was named as a defendant in this case and he has pleaded guilty, but his plea is a personal statement of his own feelings in this matter, of his own views in this matter, and has nothing to do with the other defend-

25

gwpdv

Healy - direct

ants, and you are therefore not to take his plea of guilty in any way as having any meaning so far as the other defendants are concerned. You will weigh the testimony as far as they are concerned and make your determination upon the facts without regard to what Mr. Healy has done. That is his statement.

Q Mr. Healy, prior to your entry of a guilty plea, did you enter into an understanding between yourself and the United States Government in connection with that plea?

A Yes, I did.

Q Was that understanding reduced to writing?

A Yes, it was.

Q I show you what has been marked for identification as Government Exhibit 3511-B and I ask you to look at that document.

Does that document contain your signature?

A Yes, it does.

Q And does it contain the signature of your attorney?

A Yes, it does.

Q Did you sign that document prior to the time you entered your guilty plea?

A Yes, I did.

Q And does that document, Government Exhibit

1 gwpdv

Healy - direct

2 3511-B, contain the entire understanding that you have with
3 the United States Government in connection with the entry
4 of your guilty plea?

5 A Yes, it is.

6 MR. WEINBERG: I offer in evidence Government
7 Exhibit 3511-B, copies of which have been provided to
8 counsel.

9 MR. MURPHY: No objection.

10 MR. BERGER: No objection.

11 (Government Exhibit 3511-B received in
12 evidence.)

13 MR. WEINBERG: May I read Government Exhibit
14 3511-B to the jury, your Honor?

15 THE COURT: Yes.

16 (Mr. Weinberg read from Government Exhibit
17 3511-B to the jury.)

18 Q Mr. Healy, do you know William Cleary?

19 A Yes, I do.

20 Q Do you see him in the courtroom?

21 A Yes, I do.

22 Q Please point him out.

23 A There, the gentleman in front of you.

24 MR. WEINBERG: May the record reflect that the
25 witness has identified the defendant?

XXX

gwpdv

Healy - direct

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THE COURT: All right.

3

Q When did you first meet Mr. Cleary?

4

A Approximately three years ago.

5

Q Were was Mr. Cleary working at the time, if you

6

know?

7

A At the Chemical Bank in White Plains.

8

Q While Mr. Cleary was working at the Chemical

9

Bank, did you make any loans through Mr. Cleary?

10

A Yes, I did.

11

Q How many loans and in what amounts?

12

A I made two loans, each totaling \$5,000.

13

Q Mr. Healy, have you ever repaid off those loans?

14

A No, I have not.

15

Q Mr. Healy, do you know a Gustavo Passarelli?

16

A Yes, I do.

17

Q Point him out.

18

MR. BURGER: Identification conceded, your

19

Honor.

20

Q When did you first meet Mr. Passarelli?

21

A Approximately June of 1974.

22

Q Mr. Healy, I want to direct your attention to

23

the summer, approximately June or July, of 1975. At that

24

time did you have a conversation with Mr. Passarelli con-

25

cerning the subject of borrowing money?

1 gwpdv

Healy - direct

2 A Yes, I did.

3 Q Where did that conversation take place?

4 A At 1 Westchester Avenue, Port Chester, New
5 York.

6 Q Was anyone else present?

7 A No, there was not.

8 Q To the best of your recollection, what did you
9 say to Mr. Passarelli and what did he say to you?10 A I went up to see Mr. Passarelli and he told
11 me that he --

12 Q Mr. Healy, you will have to speak up, please.

13 A I went up to 1 Westchester Avenue in Port
14 Chester and I spoke to Mr. Passarelli, and he told me that
15 approximately one year prior to that he had purchased this
16 particular property and that a mortgage which was on the
17 property at that time was due in October of 1975 and that
18 he was looking for the mortgage to be refinanced and that
19 he needed some working capital until such time as the re-
20 finance could be put into effect.21 Q Mr. Healy, what was your understanding of the
22 term "refinancing"?23 A I understood the term to mean that the mortgage
24 which was on the property at that time, together with any
25 liens or of taxes, unpaid taxes, would be paid off by

1 gwpdv

Healy - direct

2 someone who would borrow money to him and they take back a
3 mortgage.

4 Q You said borrow money to him.

5 A Lend money to him.

6 Q What did you say to Mr. Passarelli at this time?

7 A I told him that I had placed mortgages in the
8 past and that I knew some private people where perhaps I
9 could arrange some private financing until such time as we
10 could consummate a mortgage transaction.

11 Q Mr. Healy, can you briefly describe the property
12 and the business that Mr. Passarelli was conducting at 1
13 Westchester Avenue at the time of this meeting?

14 A The property is in Port Chester, New York. It
15 is at the tip or end of Westchester Avenue. The property
16 is approximately one and a quarter acres and fronts on
17 either the Byron River or the Byron Creek, having 700 feet,
18 I believe, on the creek. The property is unimproved prop-
19 erty, that is, it does not have any permanent buildings.
20 It does, however, have two portable buildings, docks, stor-
21 age space and equipment which would allow boats to be
22 moved from the water onto the land.

23 Q Mr. Healy, after this conversation with Mr.
24 Passarelli, did you make any efforts to borrow money on
25 behalf of Mr. Passarelli?

1 gwpdv

Healy - direct

2 A Yes, I did.

3 Q Would you describe the initial effort you made?

4 A I spoke to a friend of mine and I asked him if
5 he had any money to lend.

6 Q What was your friend's name?

7 A Walter Steel.

8 Q Was anybody else present during this conversa-
9 tion?

10 A Not at this conversation.

11 Q What did you ask Mr. Steel?

12 A I asked Mr. Steel if he would be able to lend
13 money and receive a second mortgage on property which I
14 thought had quite a value above the first mortgage that
15 was on the property.

16 Q Did Mr. Steel agree to do that?

17 A Yes, he did.

18 Q Did there come a time when you introduced Mr.
19 Steel to Mr. Passarelli?

20 A Yes, I did.

21 Q And was any loan arrangement made in your
22 presence that you are aware of between Mr. Steel and Mr.
23 Passarelli?

24 A Yes, there was.

25 Q And could you describe that loan arrangement,

1 gwpdv

Healy - direct

2 please?

3 A Mr. Steel was to advance approximately \$30,500
4 and receive a second mortgage on the property in the amount
5 of \$32,000. He was also to receive interest on a semi-annual
6 basis until the loan was to be repaid, which was due in
7 one year.

8 Q To your knowledge, was this loan consummated?
9 Was the money lent to Mr. Passarelli?

10 A Some of it was.

11 Q Approximately how much was loaned to Mr.
12 Passarelli?

13 A I would say sixteen to twenty thousand dollars.

14 Q Did you get any of the loan proceeds yourself?

15 A Yes, I did.

16 Q Approximately how much?

17 A Twelve to thirteen, fourteen thousand dollars.

18 Q Mr. Healy, I would now like to direct your
19 attention to August or September of 1975. Did you have
20 another conversation at that time with Mr. Passarelli about
21 borrowing money?

22 A Yes, I did.

23 Q Where did that conversation take place?

24 A At 1 Westchester Avenue in Port Chester.

25 Q Do you recall if anyone else was present?

1 gwpdv

Healy - direct

2 A No, there was not.

3 Q To the best of your recollection, tell the jury
4 in substance what you said to Mr. Passarelli and what he
5 said to you.

6 A At that time I told Mr. Passarelli that a title
7 search which I obtained for Mr. Steel showed that the
8 property was in foreclosure. He told me that he had been
9 talking to the mortgagees, that is, the owners of the
10 mortgage, and that if he could obtain interim money from
11 time to time he could adjourn the sale of the property,
12 and he wanted to know if I knew anybody who had money.

13 Q What did you understand the expression "adjourn
14 the sale of the property" to mean?

15 A Well, when a public sale is scheduled, the
16 property is sold at public auction, it is within the author-
17 ity of the referee, with the consent of the mortgage owners,
18 to adjourn a sale from time to time in order to give the
19 owner time to pay off the mortgage.

20 Q What did you say to Mr. Passarelli when Mr.
21 Passarelli asked you about arranging for additional money?

22 A I told him I knew somebody at the Barclay's Bank
23 from whom I had borrowed money from in the past and that I
24 would go talk to him about lending some money to Mr.
25 Passarelli.

1 gwpdv

Healy - direct

2 Q Do you recall what Mr. Passarelli said to you?

3 A He told me that his credit rating was not of
4 such a nature that he could borrow money. We had applied
5 for a loan in a prior institution, and the credit report
6 indicated that there were a number of judgments against
7 him and a tax lien.

8 I told him that it would be difficult because of
9 this credit rating to get a loan in his name, and he
10 agreed with me, and he also told me that although he didn't
11 owe the Barclay's Bank any money he had banked with them
12 previously and his reputation was not too good.

13 Q Was there any other discussion at that time
14 that you recall concerning the borrowing of money?

15 A No, there was not.

16 Q Was there any discussion about alternative ways
17 you could borrow the money?

18 A Not at that time, no. During this entire
19 period I had called a number of mortgage brokers, mortgage
20 people, and they had looked at the property, and I was
21 attempting to obtain a mortgage for him on the entire prop-
22 erty in a rather large amount.

23 Q Mr. Healy, after this conversation with Mr.
24 Passarelli, did you have a subsequent conversation with
25 Mr. -- withdrawn, please, your Honor.

gwpdv

Healy - direct

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After this conversation with Mr. Passarelli, what, if anything, did you do to obtain funds for Mr. Passarelli?

A Mr. Passarelli told me that since his credit was not sufficient to borrow money at the Barclay's Bank, that his mother-in-law, who was a woman of some means, who owned their home in Port Chester and who also had an interest in a family beauty salon, would qualify for credit and would I be able to get a loan in her name, the proceeds of which would be used to keep this marina going until such time as subsequent financing could be arranged.

Q And did you respond to Mr. Passarelli?

A I told him I thought it might be done and that I would go to the bank and inquire.

Q Did you go to the bank and inquire?

A Yes, I did.

Q And with whom did you speak?

A I spoke with Mr. Cleary.

Q Was anybody else present during this conversation?

A No, there was not.

Q What did you say to Mr. Cleary and what did Mr. Cleary say to you?

A I told Mr. Cleary in substance that I had a

1 gwpdv

2 client who owned a marina in Port Chester for whom I was
3 trying to obtain permanent financing. I told him that I
4 thought it was -- it could be a very profitable business
5 but because of shortage of money the marina was not func-
6 tioning properly and that with an infusion of some capital
7 I believed that the marina could be successful.

8 Q Did you tell Mr. Cleary the name of this individ-
9 ual?

10 A I told him that the name of the individual was
11 Gustavo Passarelli who had banked at the Barclay's Bank
12 in Port Chester but no longer banked with them and that he
13 had some prior business failures and by reason of that
14 he would not qualify for a loan but that his mother-in-law
15 certainly would qualify for credit.

16 Q And what was Mr. Cleary's response to that?

17 A He told me he would process an installment loan
18 for her and if things worked out he would lend -- make a
19 loan to her of \$5,000 net, adding on interest charges, et
20 cetera, et cetera, and he gave me the usual bank forms.

21 Q Do you recall what forms he gave you at that
22 time?

23 A Yes. I believe he gave me an application which
24 was, in effect, a financial statement, which was to be
25 filled in by any borrower. He also gave me an installment

1 gwpdv

Healy - direct

2 note.

3 Q What, if anything, did you do with those forms?

4 A I took the forms up to 1 Westchester Avenue in
5 Port Chester and I met with Mr. Passarelli.

6 Q Was anybody else present at that time?

7 A No.

8 Q Please describe what you did at that meeting,
9 with Mr. Passarelli and the conversation that you had with
10 Mr. Passarelli.

11 A I told him at that time that in order to get
12 this loan certain documents had to be submitted to the bank,
13 he would have to have them filled in and have them exe-
14 cuted by his mother-in-law.

15 He told me that he had authority to sign his
16 mother-in-law's name, that he had done so in the past, had
17 full authority to do so.

18 I sat down with him and I filled in the body of
19 this financial statement from information which I discussed
20 with him.

21 He then signed his mother-in-law's name not
22 only on the financial statement but on the installment note.

23 Q What, if anything, did you do with the financial
24 statement and the installment note?

25 A I brought it to the Barclay's Bank and submitted

1 gwpdv

2 it to Mr. Cleary.

3 Q Do you recall any conversation you had with
4 Mr. Cleary at the time that you submitted the application
5 in Mr. Passarelli's mother-in-law's name and the note?

6 A I don't recall any conversation, but within a
7 short period thereafter he told me that the loan -- he could
8 approve the loan and he issued the check to me payable to
9 Mary Roccario.

10 Q And he gave that check to you?

11 A Yes, he did.

12 Q And what did you do with that check?

13 A I went up to 1 Westchester Avenue and delivered
14 it to Mr. Passarelli.

15 Q Did he give you any of the proceeds of that
16 loan?

17 A I don't recall if he did at that time, but I
18 have received money from him from time to time.

19 Q Mr. Healy, were you ever present when Mr. Cleary
20 personally met Mrs. Roccario, the mother-in-law of Mr.
21 Passarelli?

22 A No, I was not.

23 Q Mr. Healy, I am showing you what has been marked
24 for identification as Government Exhibits 1, 2 and 3. I
25 ask you if you recognize Government Exhibit No. 1.

gwpdv

Healy - direct

1
2 A Yes, I do.

3 Q What is Government Exhibit No. 1?

4 A It is an application for personal credit.

5 Q Mr. Healy, you are going to have to talk up so
6 all the members of the jury can hear you.

7 Mr. Healy, does Government Exhibit No. 1 contain
8 your handwriting?

9 A Yes, it does.

10 Q Is Government Exhibit No. 1 the financial
11 application that you filled out in Mr. Passarelli's pre-
12 sence?

13 A Yes, it is.

14 Q And that you gave to Mr. Cleary?

15 A Yes, it is.

16 MR. WEINBERG: I offer in evidence Government
17 Exhibit No. 1.

18 MR. BERGER: No objection.

19 MR. MURPHY: No objection.

XXX 20 (Government Exhibit 1 for identification
21 received in evidence.)

22 Q What is Government Exhibit No. 2?

23 A An installment note and security agreement.

24 Q Do you recognize Government Exhibit No. 2?

25 A Yes, I do.

1 gwplv

Healy - direct

2 Q And when did you see it first?

3 A When it was given to me by Mr. Cleary.

4 Q And did you fill that out in the presence of
5 Mr. Passarelli?

6 A No, my handwriting does not appear on this.

7 Q Did you get it from Mr. Passarelli, that docu-
8 ment?

9 A Yes, I did.

10 Q And did you submit it completed to Mr. Cleary?

11 A Yes, I did.

12 MR. WEINBERG: I offer into evidence Government
13 Exhibit No. 2.

14 MR. BERGER: No objection.

15 MR. MURPHY: No objection.

16 (Government Exhibit 2 for identification
17 received in evidence.)

18 Q Mr. Healy, what is Government Exhibit No. 3?

19 A It is a bank money order payable to Mary
20 Roccario in the sum of \$5,000.21 Q Have you ever seen that check before today or
22 before being shown it by an FBI agent?

23 A Yes, I have.

24 Q And when was that?

25 A Approximately September 26, 1975.

1 gwpdv

Healy - direct

2 Q Is that the check that Mr. Cleary gave to you?

3 A Yes, it is.

4 Q And is that the check that you gave to Mr.

5 Passarelli?

6 A Yes, it is.

7 MR. WEINBERG: I offer into evidence Government
8 Exhibit No. 3.

9 MR. BERGER: No objection.

10 MR. MURPHY: No objection.

11 (Government Exhibit 3 for identification
12 received in evidence.)13 Q Mr. Healy, let me direct your attention to
14 approximately October 9, 1975. Did you have a conversation
15 around that time with Mr. Cleary concerning a loan which you
16 wished to make at Barclay's Bank?

17 A Yes, I did.

18 Q And where did that conversation take place?

19 A At the Barclay's Bank.

20 Q Was anyone else present?

21 A No.

22 Q To the best of your recollection, what did
23 you say to Mr. Cleary and what did he say to you?24 A I told Mr. Cleary that I was having some finan-
25 cial problem, that I would like to borrow \$5,000, which I

- 1 gwpdv Healy - direct
- 2 thought could be paid back within a short period of time.
- 3 Q What did Mr. Cleary say to you?
- 4 A He told me that he would be able to lend me
- 5 \$5,000.
- 6 Q Did you fill out an application at that time?
- 7 A I don't believe I did.
- 8 Q Did he give you anything at that time?
- 9 A I believe he issued a check to me or three
- 10 checks which totaled \$5,000.
- 11 Q Did you sign any note at that time?
- 12 A I don't believe I did at that time, no.
- 13 Q Mr. Healy, did you have a subsequent conversa-
- 14 tion with Mr. Cleary about that loan?
- 15 A Yes, I did.
- 16 Q Do you recall when it was in relation to the
- 17 first conversation?
- 18 A My recollection is that it was within a week
- 19 or ten days from the time that I received the money.
- 20 Q Was this a personal conversation or on the
- 21 telephone?
- 22 A It was a personal conversation.
- 23 Q And was anyone else present?
- 24 A No.
- 25 Q And what did you say to Mr. Cleary and what did

1 gwpdv

Healy - direct

2 he say to you?

3 A Mr. Cleary said to me that he had made a credit
4 report on me and that it was not favorable and that I had
5 to repay the loan right away.

6 Q What did you say to him?

7 A I told him that I was unable to pay it back at
8 that time, that I would attempt to do so.

9 Q And did he have any response to that?

10 A No. He indicated to me that it was presenting
11 a problem with him so far as the bank was concerned, and
12 he gave me a note to sign, which was a time note.

13 Q What kind of loan had you initially taken out on
14 October 9, 1975?

15 A I understood that I was getting an instalment
16 loan payable over a period of months.

17 Q Mr. Healy, I am showing you what has been
18 marked for identification as Government Exhibit 29. Do you
19 recognize Government Exhibit 29?

20 A Yes.

21 Q And how do you recognize it?

22 A My signature is on it.

23 Q Do you recall when you signed that document?

24 A It was within a week or ten days from the date
25 that I received \$5,000 from the Barclay's Bank.

gwpdv

Healy - direct

MR. WEINBERG: I offer Government Exhibit 29.

MR. MURPHY: May I have a voir dire?

THE COURT: Yes, of course.

VOIR DIRE EXAMINATION

BY MR. MURPHY:

Q On this Government Exhibit 29, I show it to you. Do you see there is approval and review, and there are signatures there on the approval? Do you know whose signature it is, whose initials or signature it is on the approval, of your own knowledge?

A It looks like WHC, which I imagine is Mr. Cleary.

Q But do you know of your own knowledge whose initials those are?

A No. It is not my handwriting.

Q Did you see anybody sign that, so far as you can recall?

A No.

Q Do you see there are different initials for review here?

A I see initials, yes.

Q Do you know who signed these other initials?

A No, I do not.

MR. MURPHY: No objection.

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Healy - direct

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2 (Government Exhibit 29 for identification
3 received in evidence.)

4 DIRECT EXAMINATION CONTINUED

5 BY MR. WEINBERG:

6 Q Mr. Healy, I show you Government Exhibits 30,
7 31 and 32.

8 Do you recognize those documents?

9 A Yes, I do.

10 Q And what are they?

11 A They are three bank money orders, all payable
12 to myself, Jerome Healy, one in the sum of \$1,000, one in
13 the sum of \$3,000, and one in the sum of \$1,000.

14 Q And when did you receive Government Exhibits
15 30, 31 and 32?

16 A On October 9, 1975.

17 Q And from whom did you receive them?

18 A Mr. Cleary.

19 MR. WEINBERG: I offer into evidence Government
20 Exhibits 30, 31 and 32.

21 MR. MURPHY: No objection, your Honor.

22 MR. BERGER: No objection.

XXX

23 (Government Exhibits 30, 31 and 32 for
24 identification received in evidence.)

25 Q Mr. Healy, did you ever repay that loan?

1 gwpdv

Healy - direct

2 A No, I have not.

3 Q Let me direct your attention now to approxi-
4 mately October 20, 1975. Did you have a conversation with
5 Mr. Passarelli concerning a loan for 8626 Realty Corporation?

6 A Yes, I did.

7 Q Where did that conversation take place?

8 A At 1 Westchester Avenue in Port Chester, New
9 York.

10 Q Was anybody else present?

11 A No.

12 Q What did you say to Mr. Passarelli and what did
13 he say to you?

14 A Mr. Passarelli said that he was in need of
15 funds again to pay off the attorneys for the mortgagee so
16 that this foreclosure could be forestalled further. He
17 asked if I knew any place where I could obtain money, and
18 I told him offhand that I did not.

19 Our conversation continued and I told him that
20 I would go to the Barclay's Bank and see whether a loan of
21 \$5,000 could be made to the 8626 Realty Corporation, which
22 was the record owner of this property on which there was
23 this mortgage.

24 Q What, if anything, did you do about obtaining
25 that loan?

1 gwpdv

Healy - direct

2 A I then went to Mr. Cleary.

3 Q Where did you meet with Mr. Cleary?

4 A At the Barclay's Bank in New Rochelle.

5 Q Did you have a conversation with Mr. Cleary at
6 that time?

7 A Yes, I did.

8 Q And what did you say to him and what did he
9 say to you?

10 A I told him that Mr. Passarelli was in need of
11 funds in order to futher adjourn this sale and that if I
12 didn't obtain money for him the property might be lost.

13 I believe at that time I submitted to him an
14 appraisal of the property which indicated that it had a
15 value far in excess of the amount of the mortgage and
16 that it would be in the best interests of Mr. Passarelli
17 if he did not lose the property and lose the equity in the
18 property.

19 He told me that Mr. Passarelli had a bad record
20 with the Barclay's Bank and that he would lend the money
21 but he would prefer that an officer other than Mr. Passarelli
22 sign the corporate note in that capacity.

23 Q Did you then have a conversation with Mr.
24 Passarelli concerning that loan?

25 A Yes, I did.

1 gwpdv

Healy - direct

2 Q And where did that conversation take place?

3 A I called Mr. Passarelli from the bank.

4 Q What did you say to Mr. Passarelli and what did
5 he say to you?

6 A I told him that I could arrange a \$5,000 short
7 term note with Barclay's Bank but that his signature was
8 not to appear on the face of the note as the corporate
9 officer because of his reputation with the bank.

10 Q Did he say anything in the phone conversation
11 that you recall?

12 A He told me there were other officers and that I
13 should come up tomorrow and he would discuss this with me.

14 Q Before you had left Mr. Cleary, did he give you
15 anything?

16 A He gave me certain documents which I believe
17 consisted of a financial statement which he wanted filled in
18 by the -- a personal financial statement to be filled in
19 by the officer signing the note, I believe a bank resolution
20 and a demand -- a short term time note.

21 Q After your phone conversation with Mr. Passa-
22 relli, did you meet with him?

23 A I did.

24 Q Was it that day or the following day?

25 A I think it was that day, but it could have been

1 gwpdv

2 the day after.

3 Q Was anybody else present?

4 A No, sir.

5 Q What did you say to Mr. Passarelli and what did
6 he say to you?

7 A I related again the conversation I had with
8 Mr. Cleary, and he told me that a person by the name of
9 Carmine Liberatore had been a family friend of his for
10 numerous years, that they had been in business together,
11 and that he was an officer of the corporation and that he
12 would sign the corporate note as the Vice President.

13 Q Did you do anything at that meeting?

14 A I asked Mr. Passarelli if Liberatore was
15 coming to the marina, and he told me that he was not coming
16 but he had authority to sign his name.

17 Q Was any application filled out at that time?

18 A I then sat down with Mr. Passarelli and I asked
19 him questions about Mr. Liberatore, whom I had never met,
20 and I filled the answers to these questions in on the bank
21 statement.

22 Q What, if anything, did you do with the bank
23 application?

24 A I gave it -- I was sitting at a desk with Mr.
25 Passarelli and he signed Mr. Liberatore's name to it as

1 gwpdv

Healy - direct

2 Vice President.

3 Q Did you have any further conversation relating
4 to the loan with Mr. Passarelli?

5 A Not at that time. He also signed the financial
6 statement as well as the note.

7 Q And what, if anything, did you do with these
8 documents after they were signed by Mr. Passarelli?

9 A I took them to the Barclay's Bank.

10 Q Did you see anybody at the Barclay's Bank?

11 A I saw Mr. Cleary.

12 Q Did you have a conversation with him?

13 A I saw him and I said -- I told him here are
14 the papers he asked me to have filled in by the corporation,
15 signed by Mr. Liberatore.

16 Q Did he give you anything at that time?

17 A I think at that time or possibly the next day
18 he issued a bank money order to me in the amount of \$5,000
19 payable to the 8626 Realty Corporation.

20 Q What did you do with the check?

21 A I brought it to the marina at 1 Westchester
22 Avenue and delivered it to Mr. Passarelli.

23 Q Did you have another conversation with Mr.
24 Cleary concerning another financial statement from Mr.
25 Liberatore?

1 gwpdv

Healy - direct

2 A Yes, I did.

3 Q And when did that conversation occur?

4 A I don't recall that it was within the next
5 three or four days or a week. Mr. Cleary told me he needed
6 a financial statement of Mr. Liberatore. I told him I
7 thought we had submitted one. He said if I did, it wasn't
8 handy. So he gave me another form to be filled in by
9 Mr. Liberatore and brought back to him.

10 Q And what did you do with that form?

11 A I then took it up to the Westchester Avenue
12 Marina in Port Chester and had a conversation with Mr.
13 Passarelli and we filled in -- I filled in the financial
14 statement with information that Mr. Passarelli gave to me,
15 and Mr. Passarelli signed it and I delivered it back to
16 the bank.

17 Q Did you deliver it to Mr. Cleary?

18 A I believe I did.

19 Q To your knowledge, has Mr. Cleary ever met Mr.
20 Liberatore?

21 A I don't believe he has, to my knowledge.

22 Q Mr. Liberatore was never in your presence when
23 Mr. Cleary talked to him?

24 A No, sir.

25 Q Mr. Healy, I show you what has been marked as

1 gwpdv

Healy - direct

2 Government Exhibits 4 and 5. Would you tell us what Govern-
3 ment Exhibits 4 and 5 are?

4 A They are financial statements.

5 Q And is your handwriting contained on Govern-
6 ment Exhibits 4 and 5?

7 A Yes, my handwriting is on those exhibits.

8 MR. WEINBERG: I offer into evidence Government
9 Exhibits 4 and 5.

10 MR. BERGER: No objection.

11 MR. MURPHY: No objection, your Honor.

XXX

12 (Government Exhibits 4 and 5 for identification
13 received in evidence.)

14 Q Mr. Healy, please identify Government Exhibit
15 6 and Government Exhibit 7.

16 A Government Exhibits 6 is a bank money order in
17 the sum of \$5,000 payable to 8626 Realty Corporation.

18 Q And is that a copy of -- is that the check that
19 you received from Mr. Cleary?

20 A Yes, it is.

21 Q And what is Government Exhibit No. 7?

22 A A \$5,000 90-day note made by 8626 Realty
23 Corporation in the sum of \$5,000.

24 Q Is that the note that you received from Mr.
25 Cleary and then had Mr. Passarelli sign?

gwpdv

Healy - direct

1
2 A Yes, it is.

3 MR. WEINBERG: I offer into evidence Government
4 Exhibits 6 and 6.

5 MR. MURPHY: No objection as to 6, your Honor.

6 Your Honor, might I ask a question about Govern-
7 ment Exhibit 7 as well?

8 VOIR DIRE EXAMINATION

9 BY MR. MURPHY:

10 Q Is Government Exhibit 7 endorsed on the back?

11 A That's right.

12 Q Is that endorsement a guarantee of the note?

13 A I believe it is.

14 Q And do you know when that note was endorsed?

15 A It was either endorsed at this time or within a
16 few days thereafter.

17 Q And who endorsed it on the back of the note?

18 A Mr. Passarelli.

19 Q So this note was then signed by both Mr. Liber-
20 atore and Mr. Passarelli?

21 A No, it was not. This signature of Carmine
22 Liberatore is by Mr. Passarelli.

23 Q And then the endorsement was also in your
24 presence?

25 A Yes.

1 gwplv

Healy - direct

2 MR. MURPHY: No objection.

XXX

3 (Government Exhibits 6 and 7 for identification
4 received in evidence.)

5 BY MR. WEINBERG:

6 Q Mr. Healy, let me direct your attention to
7 approximately October 27, 1975.8 Did you have a conversation with Mr. Passarelli
9 about a loan in the name of Westchester Avenue Marina?

10 A Yes, I did.

11 Q Where did that conversation take place?

12 A At the marina at 1 Westchester Avenue.

13 Q And who was present?

14 A Myself and Mr. Passarelli.

15 Q What did you say and what did Mr. Passarelli
16 say?17 A Mr. Passarelli said he was still having finan-
18 cial problems, that he was trying to work out a deal with
19 the mortgagees and that he needed some additional financing.20 I told him that I would pursue another \$5,000
21 loan in the name of the Westchester Avenue Marina, Inc.
22 with the Barclay's Bank.

23 Q What is Westchester Avenue Marina, Inc.?

24 A Westchester Avenue Marina, Inc. is a corporation
25 which at that time was controlled by Mr. Passarelli and

1 gwpdv

Healy - direct

[12]

2 which operated the marina at 1 Westchester Avenue. That is,
3 it rented out space for boats, sold accessories, made minor
4 boat repairs, et cetera. It was an operating marina, so
5 to speak.

6 Q What, if anything, did you do in order to secure
7 a loan in the name of Westchester Avenue Marina?

8 A I went down to the Barclay's Bank and I saw
9 Mr. Cleary, and I told him that Mr. Passarelli needed addi-
10 tional financing to keep creditors and the mortgagee from
11 foreclosing or from pursuing him any further.

12 Q What did Mr. Cleary say to you?

13 A He told me that he would be able to lend the
14 Westchester Avenue Marina, Inc. \$5,000 on a time basis.

15 Q What do you mean on a time basis? Try to speak
16 up.

17 A A time basis is a note which is due on a cer-
18 tain date, usually within six months or so, rather than a
19 loan which is paid off on a monthly basis.

20 Q Did Mr. Cleary give you any forms to fill out
21 at that time?

22 A I believe he gave me a corporate note which was
23 to be executed by the Westchester Avenue Marina.

24 Q Did you see anyone at the Westchester Avenue
25 Marina to sign the corporate note?

wpdv

Healy - direct

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2

A Yes, I did.

3

Q Who did you see?

4

A I saw Mr. Passarelli.

5

Q Did he sign that note in your presence?

6

A Yes, he did.

7

Q What, if anything, did you do with that note?

8

A I took it back to the Barclay's Bank and deliv-

9

ered it to Mr. Cleary, who subsequently issued a bank money

10

order to me in the sum of \$5,000 payable to the Westchester

11

Avenue Marina, Inc.

12

Q What did you do with that check?

13

A I brought it to Mr. Passarelli.

14

Q Mr. Healy, I show you what has been marked for

15

identification as Government Exhibits 10 and 11. Do you

16

recognize Government Exhibit No. 10?

17

A Yes, I do.

18

Q What is Government Exhibit No. 10?

19

A It is a bank money order in the sum of \$5,000

20

payable to Westchester Avenue Marina, Inc.

21

Q Who did you receive this check from?

22

A Mr. Cleary.

23

Q And who did you give it to?

24

A Mr. Passarelli.

25

Q What is Government Exhibit No. 11?

1 gwpdv

Healy - direct

2 A That is a time note due in thirty days in the
3 sum of \$4,000 made by Westchester Avenue Marina, Inc. and
4 signed by Gustavo Passarelli.

5 Q Was that signed in your presence?

6 A Yes, it was.

7 MR. WEINBERG: I offer into evidence Government
8 Exhibits 10 and 11.

9 MR. MURPHY: No objection to 10, your Honor. I
10 object to 11 as no foundation has been laid so far.

11 (Government Exhibit 10 for identification
12 received in evidence.)

13 THE COURT: Is it your testimony this Exhibit
14 No. 11 is the note that Mr. Passarelli signed?

15 THE WITNESS: Not at the time the \$5,000 check
16 was given to me, your Honor. A prior note was signed and
17 I haven't seen it so I don't know who signed it, but I
18 believe that was returned to Mr. Passarelli when he made
19 a payment of \$1,000 and this was a renewal note one month
20 later in the summer of \$4,000.

21 THE COURT: But this was not signed in your
22 presence?

23 THE WITNESS: Yes, it was, your Honor, one
24 month later, approximately.

25 MR. MURPHY: That was the essence of my

gwpdv

Healy - direct

objection, and with that foundation I withdraw my objection.

(Government Exhibit No. 11 for identification received in evidence.)

Q Mr. Healy, I show you what has been marked as Government Exhibit No. 12. I ask if you recognize that document.

A Yes, I do.

Q Have you ever seen that document before?

A Yes, I have.

Q Can you tell us what that document is?

A It is a corporate resolution.

Q Can you tell us how that -- withdrawn.

Have you ever had a conversation with Mr. Cleary concerning that document?

A Yes, I have.

Q And where did that conversation take place?

A At the Barclay's Bank.

Q And what did you say to him and what did he say to you concerning that document?

MR. BERGER: Objection, your Honor. A limiting instruction at this time. I don't know which document it is. I would like to see it.

MR. WEINBERG: I would be happy to show it to him.

1 gwpdv

Healy - direct

2

MR. BERGER: Then I ask for a limiting instruc-

3

tion.

4

5

THE COURT: All he is indicating -- what are you having him do, describe what the document is?

6

7

8

MR. WEINBERG: Yes. I want him to show his source of knowledge as to how that document relates to this case and then I will offer it.

9

10

11

THE COURT: What is the pending question? The pending question is did he have a conversation with him or what was the document?

12

13

MR. WEINBERG: The pending question is did he have a conversation with Mr. Cleary about that document.

14

15

THE COURT: All right. The answer is yes?

16

Q And what was that conversation?

17

A Mr. Cleary told me to have this corporate resolution executed.

18

19

Q Did you have it executed?

20

A Yes, I did.

21

Q And was it signed in your presence?

22

A Yes, it was.

23

Q And who signed it?

24

A Mr. Passarelli signed Mr. Liberatore's name.

25

MR. WEINBERG: I offer into evidence Government

1 gwpdv

Healy - direct

2 Exhibit No. 12.

3 MR. MURPHY: Excuse me. May I ask the Govern-
4 ment a question?

5 (Counsel confer.)

6 MR. MURPHY: No objection, your Honor.

7 THE COURT: I haven't heard from you, Mr.
8 Berger.

9 MR. BERGER: I would like to ask the Government
10 one question.

11 Was I ever given that document?

12 MR. WEINBERG: You want to ask me a question?

13 MR. BERGER: Was I given that document?

14 MR. WEINBERG: I would have to check. I can't
15 be sure whether this was given to you prior or not.

16 THE COURT: The point is you have seen it.

17 MR. BERGER: Just now.

18 THE COURT: The question is whether you object
19 to it.

20 MR. BERGER: No, I have no objection.

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21 (Government Exhibit No. 12 for identificaton
22 received in evidence.)

23 Q In connection with the loan to Westchester
24 Avenue Marina, the one you just described, had you given
25 Mr. Cleary a financial statement in connection with the

1 gwpdv

Healy - direct

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2 marina?

3 A I believe that I had submitted to him a state-
4 ment prepared by an accountant indicating or showing the
5 balance sheet and profit and loss statement of the marina.

6 Q Was that a certified statement?

7 A No, it was not.

8 Q Pardon me?

9 A No, it was not.

10 Q I show you what has been marked as Government
11 Exhibit No. 9.

12 Can you identify that document?

13 A Yes. It is a financial statement of the West-
14 chester Avenue Marina, Inc., consisting of a balance sheet
15 as of August 31st, 1975, and the statement of operations
16 for the six months ending August 31st, 1975.

17 Q Were you given that document by Mr. Passarelli?

18 A Yes, I was.

19 Q And did you give it to Mr. Cleary?

20 A I did.

21 MR. WEINBERG: I offer in evidence Government
22 Exhibit No. 9.

23 MR. BERGER: No objection.

24 MR. MURPHY: No objection.

25 (Government Exhibit No. 9 for identification

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Healy - direct

received in evidence.)

Q Mr. Healy, directing your attention to November 12, 1975, did you have a conversation with Mr. Passarelli concerning a loan in the name of a Carl French?

A Yes, I did.

Q Where did that conversation take place?

A At 1 Westchester Avenue, Port Chester, New York.

Q Was anyone else present?

A No.

Q What did you say to Mr. Passarelli and what did he say to you?

A Mr. Passarelli again told me that he was desperately in need of more money to keep this property from being foreclosed and whether I could arrange any financing for him. He told me that he had a friend of his who had worked for him in the past and who he had done business with and whether I could obtain for this person, Carl French, a loan. He told me that Carl French owed him a substantial amount of money and that French would be willing to sign a note and pay back to Mr. Passarelli the money that he owed him.

Q Did you agree to do that?

A I told him I would go to the Barclay's Bank and see if they would lend such a individual money.

1 gwpdv

Healy - direct

2 Q Did you go to Barclay's Bank?

3 A Yes, I did.

4 Q And who did you have a conversation with?

5 A Mr. Cleary.

6 Q And what did you say to Mr. Cleary and what did
7 he say to you?

8 A I told Mr. Cleary that Mr. Passarelli had a
9 friend of his who had worked for him over the years, who
10 did not work for him at that time but was a salesman in
11 some business, and he owed Mr. Passarelli money and that he
12 would be willing to sign an installment note if the Barclay's
13 Bank would lend \$5,000 to Mr. French.

14 Q What did Mr. Cleary say to you?

15 A He told me at that time that he may be able to
16 do it and he gave me bank forms consisting of an application
17 and an installment note to be filled in and returned to
18 him and he could process the application.

19 Q What, if anything, did you do with the bank
20 application and the note?

21 A I took it to Mr. Passarelli in Port Chester,
22 New York.

23 Q Did you have a conversation with Mr. Passarelli
24 at that time?

25 A Yes. I told him that certain things had to be

- 1 gwpdv Healy - direct
- 2 done, that is, the application filled in, signed by French
- 3 and the note signed, and that it would be taken back to the
- 4 bank and the loan would be processed in due time.
- 5 Q Was the bank application filled out at that
- 6 time?
- 7 A Yes, it was.
- 8 Q And who filled it out?
- 9 A I filled in the body of the application with
- 10 information I received from Mr. Passarelli.
- 11 Q Was Mr. French present during this conversation?
- 12 A No, sir.
- 13 Q Did Mr. Passarelli make any telephone calls to
- 14 Mr. French during this conversation?
- 15 A No.
- 16 Q What, if anything, did you do with the bank
- 17 application completed in Mr. French's name?
- 18 A Mr. Passarelli told me he had authority to sign
- 19 French's name, that they had been friends and business asso-
- 20 ciates for a number of years and that he had permission to
- 21 sign his name.
- 22 Q Did he sign his name?
- 23 A Yes, he did.
- 24 Q What did you do with the completed financial
- 25 application?

1 gwpdv

Healy - direct

2 A I brought it to Mr. Cleary at the Barclay's Bank.

3 Q Did you give it to Mr. Cleary?

4 A Yes, I did.

5 Q Did you have any conversation with him at
6 the time?

7 A No. I just stated to him that here was the
8 papers that he asked me to have executed. He accepted them
9 and sometime later he issued a check payable to Carl French.

10 Q Did he give that check to you?

11 A Yes, he did.

12 Q What, if anything, did you do with that check?

13 A I delivered it to Mr. Passarelli.

14 Q Did there come a time when you had a discussion
15 with Mr. Cleary about a second financial statement on be-
16 half of Mr. French?

17 A I believe I did.

18 Q Do you recall if anyone else was present?

19 A No.

20 Q Do you recall what you said to Mr. Cleary and
21 what he said to you?

22 A Mr. Cleary again indicated, or indicated to me
23 that he needed an application signed by French. I told him
24 that it was my impression that we had given him one. He
25 told me that he didn't have it in his possession and would

1 gwpdv

Healy - direct

2 I please have another one executed.

3 Q And what, if anything, did you do in order to
4 get another loan application executed?

5 A I saw Mr. Passarelli at the marina at Port
6 Chester, New York, and he gave me information concerning
7 Carl French and he signed Mr. French's name to it and I
8 brought it back to the Barclay's Bank.

9 Q And did you give it to anybody at the Barclay's
10 Bank?

11 A I gave it to Mr. Cleary.

12 Q Do you recall any conversation with Mr.
13 Cleary when you gave him that application?

14 A No.

15 Q Mr. Healy, showing you Government Exhibits 15
16 and 15-A, can you identify each of those exhibits?

17 A Yes. Each of them is an application for per-
18 sonal credit which is filled in with my handwriting and is
19 signed -- and it bears the signature of Carl French.

20 Q Were those documents filled out -- were those
21 documents signed in your presence?

22 A Yes, they were.

23 Q And who signed them?

24 A Mr. Passarelli.

25 Q Mr. Healy, have you ever met Carl French?

1 gwpdv

Healy - direct

2 A Yes, I have.

3 Q At the time these loan applications were sub-
4 mitted, had you met Mr. French?

5 A No, I had not.

6 Q To your knowledge, did Mr. Cleary ever meet
7 Mr. French?

8 A Not to my knowledge.

9 Q At the time these loan applications were sub-
10 mitted and approved by Mr. Cleary, had he met Mr. French?

11 A I don't believe so, no.

12 MR. WEINBERG: I offer into evidence Government
13 Exhibits 15 and 15-A.

14 MR. BERGER: No objection.

15 MR. MURPHY: No objection to Government Exhibits
16 15 and 15-A, your Honor.

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17 (Government Exhibits 15 and 15-A for identifica-
18 tion received in evidence.)

19 Q Mr. Healy, showing you Government Exhibits 16
20 and 17, do you recognize those documents?

21 A Yes, I do.

22 Q Can you tell us what they are, please?

23 A Exhibit 16 is a bank money order in the sum of
24 \$5,000 payable to Carl French.

25 Q Was that bank money order given to you by Mr.

1 gwpdv

Healy - direct

2 Cleary?

3 A Yes, it was.

4 Q And did you turn it over to Mr. Passarelli?

5 A Yes, I did.

6 MR. WEINBERG: I offer into evidence Government
7 Exhibit 16.

8 MR. MURPHY: No objection.

9 (Government Exhibit 16 for identification
10 received in evidence.)

11 Q Mr. Healy, what is Government Exhibit 17?

12 A A \$5,000 time loan in the sum of \$5,000 due
13 in 90 days, with Carl French's name appearing on the bottom
14 as the maker.

15 Q Did you give that document to Mr. Passarelli?

16 A Yes.

17 Q Did you return it to Mr. Cleary?

18 A Yes, I did.

19 MR. WEINBERG: I offer into evidence Government
20 Exhibit 17.

21 MR. BERGER: No objection.

22 MR. MURPHY: A few questions, your Honor, as
23 to this document as well?

24 VOIR DIRE EXAMINATION

25 BY MR. MURPHY:

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Healy - direct

2 Q Government Exhibit 17 marked for identification,
3 I ask you whether you saw the endorsement made on the back
4 of that.

5 A I believe I did.

6 Q And what is the name handwritten on the back of
7 that?

8 A Carol French.

9 Q Who do you say wrote that name?

10 A I believe Mr. Passarelli did.

11 Q And was that in your presence?

12 A I believe so. To the best of my recollection,
13 it is, yes.

14 MR. MURPHY: No objection.

15 (Government Exhibit 17 for identification
16 received in evidence.)

17 DIRECT EXAMINATION CONTINUED

18 BY MR. WEINBERG:

19 Q Mr. Healy, directing your attention to approxi-
20 mately November 13, 1975, did you have a conversation with
21 Mr. Cleary concerning a loan in the name of Joseph or
22 Giuseppe Passarelli?

23 A I had a conversation with Mr. Cleary.

24 Q You had a conversation with Mr. Cleary about a
25 loan for Mr. Joseph Passarelli?

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Healy - direct

2 A Yes, I did.

3 Q Where did that conversation take place?

4 A At the Barclay's Bank in New Rochelle.

5 Q What did you say to Mr. Cleary at that time and
6 what did he say to you?7 A I told him that I had had a conversation with
8 Mr. Gustavo Passarelli the day before or on the same day,
9 and Gustavo Passarelli told me that there would be an auc-
10 tion of the property held, I believe, on November 13th,
11 and that unless he could raise approximately \$9,000, which
12 would be sufficient money to bid on the property, to make
13 a bid of 10 percent on the property, that he would lose
14 the property to a third party.15 I told Mr. Cleary this and I told him that I
16 had a conversation with Mr. Passarelli in which he asked
17 me if I could obtain a loan for his brother, who worked for
18 the Arnold Bakeries and also worked part time at the marina.

19 Q Did Mr. Cleary agree to make that loan?

20 A Yes, he did.

21 Q At the time did Mr. Cleary give you anything?

22 A He gave me a check for \$5,000 payable to
23 Joseph Passarelli and also applications for a loan and a
24 note, an unsigned note.

25 Q At the time that Mr. Cleary gave you the \$5,000

1 gwpdv

Healy - direct

2 check and the unsigned note, had you submitted any financial
3 applications to him or any loan applications to him on behalf
4 of Mr. Joseph Passarelli?

5 A No, I did not.

6 Q What, if anything, did you do with the \$5,000
7 check and the note that Mr. Cleary had given to you?

8 A I went up to the County Court House in White
9 Plains, New York, in the lobby of the courthouse, where the
10 referee who had foreclosed on the property was in the
11 process of putting the marina property up for public sale.
12 I met both the Passarellis at that time. Gustavo Passarelli
13 introduced me to his brother, whom I had never met. I had
14 seen him before at the marina. And I explained to him that
15 I had arranged a \$5,000 loan for him which he in turn was
16 going to lend or give to his brother, and that certain docu-
17 mentary evidence had to be given to the bank so that a
18 credit check could be run on him and a note evidencing the
19 loan would have to be submitted to the bank.

20 Q Were any documents completed at that time?

21 A I believe at that time the application for a loan
22 was filled in, signed by Joseph Passarelli and a note in the
23 sum of \$5,000 was signed by him.

24 Q And what, if anything, did you do with the
25 financial statement after Mr. Passarelli had completed it?

1 gwpdv

Healy - direct

2 A Subsequently I brought it back to the Barclay's
3 Bank.

4 Q Did you give it to anybody in particular?

5 A I gave it to Mr. Cleary.

6 Q Mr. Cleary had already previously given you a
7 check for that loan, is that correct?

8 A Yes.

9 Q Mr. Healy, I show you Government Exhibits 21 and
10 22 for identification, and I ask you to identify each of
11 those documents, please.

12 Q Exhibit 21 is a \$5,000, 30-day time note signed
13 by Giuseppe Passarelli.

14 Q Did he sign that in your presence?

15 A Yes, he did.

16 Q Is that the note Mr. Cleary had given to you?

17 A Yes.

18 Q And that you had Mr. Passarelli sign?

19 A Yes.

20 Q And what is Government Exhibit 22?

21 A Bank money order in the sum of \$5,000 payable
22 to Joseph Passarelli.

23 Q And was that check turned over by you to Mr.
24 Joseph Passarelli?

25 A Yes, it was.

1 gwpdv

Healy - direct

2 A And what did Mr. Joseph Passarelli do with that
3 check?

4 A Well, I wrote the endorsement -- at this point
5 Joseph Passarelli bid on the property and agreed to pay 10
6 percent of the auction price, and I endorsed this check over
7 to Louis Galgano, who was the court-appointed referee, and
8 Joseph Passarelli endorsed it.

9 MR. WEINBERG: I offer into evidence Government
10 Exhibits 21 and 22.

11 THE COURT: You mean you wrote --

12 THE WITNESS: The legend.

13 THE COURT: -- the endorsement and Passarelli
14 signed it?

15 THE WITNESS: Yes, that's right, your Honor.

16 MR. BERGER: No objection.

17 MR. MURPHY: No objection.

18 (Government Exhibits 21 and 22 for identifica-
19 tion received in evidence.)

20 Q Mr. Healy, I show you Government Exhibit 20
21 and I ask if you can identify it.

22 A Yes. Government Exhibit 20 is a financial
23 statement of Giuseppe Passarelli. I filled in the statement
24 at the courthouse in White Plains or or about November 13,
25 1975, and Mr. Passarelli signed it on the reverse side.

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1 gwpdv

Healy - direct

2 Q And is that the financial statement that you
3 returned to Mr. Cleary?

4 A I believe I did return it to Mr. Cleary, yes.

5 MR. WEINBERG: I offer into evidence Government
6 Exhibit 20.

7 MR. BERGER: No objection.

8 MR. MURPHY: No objection.

XXX

9 (Government Exhibit No. 20 for identification
10 received in evidence.)

11 Q Mr. Healy, to your knowledge, has Mr. Cleary
12 ever met Mr. Joseph or Giuseppe Passarelli?

13 A Not to my knowledge, no.

14 Q At the time that Mr. Cleary approved this loan,
15 had he met Mr. Giuseppe Passarelli, to your knowledge?

16 A No.

17 Q Mr. Healy, let me direct your attention to
18 approximately November 25, 1975.

19 Did you have a conversation with Mr. Passarelli
20 concerning the possibility of loaning money -- withdrawn.

21 Directing your attention to approximately Novem-
22 ber 25th, 1975, did you have a conversation with Mr.
23 Passarelli relating to a loan application in the name of
24 Thomas Powers?

25 A Yes, I did.

1 gwpdv

2 Q And where did that conversation take place?

3 A At 1 Westchester Avenue, Port Chester, New
4 York.

5 Q Was anyone else present?

6 A Mr. Passarelli and myself were present.

7 Q And what did you say to Mr. Passarelli and what
8 did he say to you?

9 A Mr. Passarelli again told me that he had to
10 cover certain expenses which he had and that he had a friend
11 of his that worked for him in the past as a freelance car-
12 penter and a person to whom he had in the immediate past
13 sold a boat to, and that Mr. Powers had not yet paid for
14 the boat and could we arrange an installment loan with the
15 Barclay's Bank.

16 Q And what, if anything, did you do in order to
17 arrange such a loan?

18 A I again spoke -- I went down to the Barclay's
19 Bank, I spoke to Mr. Cleary. He gave me certain forms.

20 Q Did you have a conversation with Mr. Cleary?

21 A Yes, I did.

22 Q And was anybody else present?

23 A No.

24 Q What did you say to Mr. Cleary and what did he
25 say to you?

1 gwpdv

Healy - direct

2 A I relayed -- I told him that Mr. Passarelli had
3 a friend of his who was a carpenter who had worked for him
4 in the past and that Mr. Passarelli some time ago had sold
5 him a boat and that he had not paid for the boat, and would
6 he be able to make a loan to this Thomas Powers so that he
7 could pay for the boat.

8 Q Was there a discussion as to who was going to
9 get the proceeds of this loan to Thomas Powers?

10 A I believe I told Mr. Cleary that Mr. Powers
11 was going to pay Mr. Passarelli for the boat with these
12 proceeds.

13 Q Did Mr. Cleary give you any documents to fill
14 out at that time?

15 A Yes, he did.

16 Q And what, if anything, did you do with those
17 documents?

18 A I delivered them to Mr. Passarelli.

19 Q And were they filled out in your presence?

20 A No, sir.

21 Q Did there come a time when you picked up those
22 documents?

23 A Yes, I did.

24 Q And who gave you those documents?

25 A Mr. Passarelli.

1 gwpdv

2 Q Were they completed at that time?

3 A Yes, they were.

4 Q And what, if anything, did you do with those
5 documents?

6 A I brought them to the Barclay's Bank and deliv-
7 ered them to Mr. Cleary.

8 Q What did Mr. Cleary give to you at that time?

9 A He gave me a check, I believe, in the sum of
10 \$5,000 payable to Thomas Powers.

11 Q Mr. Healy, in the conversation with Mr. Cleary,
12 where you first raised the subject of the Powers loan,
13 did you have any discussion with Mr. Cleary about Mr.
14 Passarelli's financial condition that you recall?

15 A I don't recall any at that time.

16 Q Mr. Healy, showing you Government Exhibits 23,
17 24 and 25, do you recognize each of those documents?

18 A Yes, I do.

19 Q And what is Government Exhibit 23?

20 A An application for personal credit.

21 Q And did you turn that document over to Mr.
22 Passarelli?

23 A Yes, I did.

24 Q Did you pick it up from Mr. Passarelli?

25 A Yes, I did.

gwpdv

Healy - direct

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Q Did you then turn that completed document over to Mr. Cleary?

A Yes, I did.

Q What is Government Exhibit 24 for identification?

A An installment note and security agreement.

Q And where did you receive that document from?

A Mr. Cleary.

Q And did you give it to anybody in particular?

A Mr. Passarelli.

Q And did Mr. Passarelli return it to you in a completed form?

A Yes, he did.

Q Did you then return that to Mr. Cleary?

A Yes, I did.

Q And What is Government Exhibit 25?

A Bank money order in the sum of \$5,000 payable to Thomas Powers.

Q And who did you get that check from?

A Mr. Cleary.

Q And who did you give that check to?

A Mr. Passarelli.

MR. WEINBERG: I offer into evidence Government Exhibits 23, 24, and 25.

MR. BERGER: No objection.

1 gwpdv

Healy - direct

2 MR. MURPHY: No objection as to Government
3 Exhibits 23, 24 and 25, your Honor.

4 (Government Exhibits 23, 24 and 25 for identi-
5 fication received in evidence.)

6 Q Mr. Healy, at the time the loan was made to
7 Thomas Powers, was any chattel mortgage security agreement
8 executed?

9 A Not at that time, no.

10 Q To your knowledge, has Mr. Cleary ever met
11 Thomas Powers?

12 A Not to my knowledge, no.

13 Q Have you ever met Thomas Powers?

14 A No.

15 Q Mr. Healy, directing your attention to December
16 15, 1975, did you have a conversation with Mr. Passarelli
17 concerning a loan in the name of Westchester Avenue Used
18 Cars Corporation?

19 A Yes, I did.

20 Q And where did that conversation take place?

21 A At the marina in Port Chester, New York.

22 Q Was anybody else present?

23 A No, there was not.

24 Q What did you say to Mr. Passarelli and what did
25 Mr. Passarelli say to you?

1 gwpdv

Healy - direct

2 A Mr. Passarelli again stated that he was in des-
3 perate need for money and where were we going to get it;
4 if we didn't obtain it everything was going to go under.

5 Q Talk louder, please.

6 A I told him I didn't know where we could get
7 money, that I didn't know anybody who had any money and
8 I didn't think we could get any more money at the Barclay's
9 Bank. He told me he had a corporation which operated on
10 a minor scale in the used car business and would we be able
11 to get a loan for that corporation. I told him I would
12 try. I went down --

13 Q Mr. Healy, before we get to the conversation,
14 do you know where the Westchester Avenue Used Car Corpora-
15 tion was operated from?

16 A It was operated from the marina in Port Chester.

17 Q Do you know if Mr. Passarelli sold used cars in
18 the same place as the marina?

19 A I knew that he had from time to time. As a
20 matter of fact, I had purchased a car from him at one time.

21 Q At that particular premises?

22 A No, it was a different premises which he owned
23 in '74 which was either sold or I don't know what happened,
24 but he had just, within the last year or so, purchased
25 this property.

1 gwpdv

Healy - direct

2 Q Mr. Healy, did you then have a conversation with
3 Mr. Cleary about this loan?

4 A Yes, I did.

5 Q Tell us the full extent you remember the con-
6 versation you had with Mr. Cleary.

7 A I told him that Mr. Passarelli had a corporation
8 which operated on a minor scale the purchase and sale of
9 used cars, and that he needed certain monies to continue
10 operating the marina, and I asked him if the bank would
11 lend to the Westchester Used Cars Corporation \$5,000.

12 Q What did Mr. Cleary say?

13 A I believe he gave me a corporate note -- a note
14 to have executed by the Westchester Used Cars, Inc., and
15 deliver it back tomorrow and he would make the loan.

16 Q And what, if anything, did you do with the
17 note?

18 A I took it to Mr. Passarelli at the marina in
19 Port Chester. I filled in the name of the corporation and,
20 I believe, he signed it.

21 Q And what did you do with the note after it was
22 signed by Mr. Passarelli?

23 A I brought it back to the Barclay's Bank and the
24 check was issued in the sum of \$5,000 payable to the West-
25 chester Used Cars.

1 gwpdv

2 Q And what, if anything, did you do with that
3 check?

4 A I delivered it to Mr. Passarelli.

5 Q Mr. Healy, I show you Government Exhibits 27
6 and 28 for identification. Would you please describe Govern-
7 ment Exhibit 27?

8 A 27 is a \$5,000, 30-day time note made by the
9 Westchester Avenue Used Cars, Inc.

10 Q Did you receive that note from Mr. Cleary?

11 A Yes.

12 Q And did you then deliver it to Mr. Passarelli?

13 A Yes.

14 Q And after it was signed did you return it to
15 Mr. Cleary?

16 A Yes.

17 Q And what is Government Exhibit 28 for identi-
18 fication, please?

19 A Bank money order in the sum of \$5,000 payable
20 to Westchester Avenue Used Cars, Inc.

21 Q And did you receive that check from Mr. Cleary?

22 A Yes, I did.

23 Q And what, if anything, did you do with that
24 check?

25 A I delivered it to Mr. Passarelli.

1 gwpdv

Healy - direct

2 MR. WEINBERG: I offer into evidence Government
3 Exhibits 27 and 28.

4 MR. BERGER: No objection.

5 MR. MURPHY: Your Honor, a question as to this
6 endorsement as well.

7 VOIR DIRE EXAMINATION

8 BY MR. MURPHY:

9 Q Government Exhibit 27. There is an endorsement
10 on the back of that. Do you know whose name that is?

11 A I believe it is Mr. Passarelli.

12 Q That is which Mr. Passarelli?

13 A Gustavo.

14 Q Mr. Gustavo Passarelli signed the endorsement
15 and he also signed as an officer?

16 A Yes, that's right.

17 Q So he signed this note as an officer and also
18 as an individual, is that right?

19 A Yes. He guaranteed it as an individual.

20 MR. MURPHY: No objection as to 27 and 28.

21 (Government Exhibits 27 and 28 for identifica-
22 tion received in evidence.)

23 DIRECT EXAMINATION CONTINUED

24 BY MR. WEINBERG:

25 Q Mr. Healy, did there come a time when you had a

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* * *

* * *

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Healy - direct

[161]

1 and was attempting to perform his functions and that, as a
2 matter of fact, he performed his functions -- he did bring
3 that out -- sufficiently that he was nominated or suggested
4 for promotion and so forth. What he wants to argue is that
5 these things show you he had no intentions to injure the
6 bank.
7

8 And he wants the resignation in, in which he
9 makes that statement. The resignation is clearly self-
10 serving.

11 It may be some of these other things on the
12 business calls may be admissible. I haven't gone through
13 them. They don't refer to any matter here, but they might.

14 All right, Mr. Berger.

15 MR. BERGER: May it please the Court, your
16 Honor permitted me, as I recall, to ask questions as to
17 whether certain loans were actually repaid. I was precluded
18 from asking questions with regard to whether offers had
19 been made to repay and negotiations had been undertaken to
20 repay by various of the debtors.

21 In going along that line of questioning, your
22 Honor, I was following the case of United States v. Matat.
23 It is a 1st Circuit case, 1944.

24 THE COURT: A 1st Circuit case in 1944 is not
25 going to be helpful to me. This is the 2nd Circuit in

1 gwpdv

2 1977.

3 MR. BERGER: In any case, the case reads as
4 follows: "The defendant's offer to sacrifice his real prop-
5 erty in order to meet his overdraft was competent upon
6 question of intent to defraud the bank."

7 I think that case is good law. It was just
8 one case I happened to copy down. Good faith of a bank
9 officer or one accused as an aider and abettor goes to the
10 heart of the case, and every circuit so holds.

11 THE COURT: The evidence in this case is that
12 whatever Mr. Cleary's naivete or innocence or his negli-
13 gence or criminal intent, whatever, certainly the evidence
14 so far in this case shows Mr. Passarelli embarked upon
15 this course with clear knowledge of what he was doing.

16 [He signed other people's names, he was always
17 seeking further loans, so forth and so on. Whether he
18 agreed to pay the bank or not, I am sure the Government
19 would take the position that the crime is completed when he
20 has done what he did in this matter.]

21 MR. BERGER: The case holds, your Honor, that
22 even in aiding and abetting, and that is what Mr. Passa-
23 relli is accused of, his intent to defraud and injure the
24 bank --

25 THE COURT: Is that all? I thought he was

1 gwpdv

Healy - direct

2 accused of being a principal.

3 MR. BERGER: He cannot be a principal under
4 Section 656.

5 THE COURT: He is a conspirator anyway.

6 MR. BERGER: That is count 1. I am offering
7 the evidence on different counts. I think it is Section 656.
8 Mr. Cleary must be found guilty or else Mr. Passarelli can-
9 not be found guilty.

10 MR. WEINBERG: That is definitely not true,
11 your Honor.

12 MR. BERGER: Under the aider and abettor, the
13 only one that can misapply funds is an agent of the bank,
14 and if the agent of the bank is not guilty then no one
15 else is. The cases so hold.

16 THE COURT: What has that to do with the issue
17 about whether people have offered to pay back the bank?

18 MR. BERGER: Because the cases hold an offer to
19 pay back the bank goes to the question of intent, was
20 there an intent to defraud and injure the bank. It is not
21 a defense. Payment is not a defense. If payment is not
22 a defense, an offer to pay certainly is not a defense.
23 But it is relevant and material and competent on the issue
24 of intent to defraud and injure.

25 THE COURT: All right. My ruling stands.

1 gwpdv

Healy - direct

2 Anything further?

3 MR. BERGER: Yes. The indictment reads that
4 these acts of which Mr. Passarelli has been accused, such as
5 hiding his name, were done because of the fact that he had
6 bad credit with the bank.

7 I tried to bring out not a conclusion as to
8 whether he had good or bad credit with the bank but the fact
9 of how much had he ever borrowed from the bank and had he
10 paid it back and under what circumstances. That goes to
11 the heart of the case as to why does or why does not Mr.
12 Passarelli appear on the face of these notes as alleged
13 by the Government, he is hiding, he is hiding himself, he
14 could not get credit at that bank, he had to use subterfuge
15 to get credit at the bank. These are all allegations
16 of the bank.

17 Yet I tried to seek from that witness how much
18 Passarelli had borrowed, if anything, from the bank and
19 had he paid it back to the bank, not simply say to the
20 witness: "Mr. Flanagan, did Mr. Passarelli have bad credit?"

21 THE COURT: You may have a point.

22 MR. BERGER: Thank you. Those are my two
23 points, your Honor, as I recall it.

24 THE COURT: On that ground you may have a point.
25 I didn't regard that issue as being that serious, but you

1 gwpdv

Healy - direct

2 may have a point and, if so, I will have Mr. Flanagan back
3 so you can ask that question.

4 MR. BERGER: Thank you, your Honor.

5 THE COURT: We will adjourn until ten o'clock
6 tomorrow.

7 Did you have something? I don't mean to dis-
8 criminate against the Government. Did you have anything?

9 MR. WEINBERG: I was going to argue on the
10 issues.

11 THE COURT: You didn't want to bring up any-
12 thing?

13 MR. WEINBERG: No.

14 (Adjournment taken to Wednesday, January 12,
15 1977 at 10:00 a.m.)

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1 gwjl 4

2 Mr. Flanagan has produced which goes to show the knowledge of
3 the bank as to Mr. Cleary's activities, I just want to lay a
4 foundation for that document without introducing it just so
5 I don't have to call Mr. Flanagan back for that purpose. The
6 only foundation is I will identify it and ask him if it is
7 kept in the business records of the company.

8 THE COURT: Is that all you are going to do?

9 MR. MURPHY: Lay the foundation.

10 THE COURT: In other words, you want to be pre-
11 pared in the event any similar acts are introduced that you
12 will be able to then present that document to the jury?

13 MR. MURPHY: Yes, exactly.

14 THE COURT: It has only been introduced for
15 purposes of identification at this point.

16 MR. MURPHY: For the purpose of identification
17 to lay my foundation so if it becomes relevant I can put it in.

18 THE COURT: I won't admit it at this point.

19 MR. MURPHY: Just to lay the foundation.

20 MR. BERGER: If it please the Court--

21 THE COURT: What is it now?

22 MR. BERGER: Yes, you ruled I may not go into
23 the question of offers to repay or settlement or anything of
24 that nature. That was at five o'clock yesterday.

25 On the government's direct examination of Mr.

1 gwjl 5

2 Flanagan, certain exhibits were put into evidence, Exhibits
3 47 through 55, which are the charge-off loan reports. On
4 those reports, on certain ones of them, there are statements
5 whereby they discuss the fact that Mr. Passarelli offered to
6 repay or work things out with the bank, and they say that he
7 offered them certain collateral and that he never got back to
8 them.

9 I feel that I have a right to go into that as
10 that has been offered and put into evidence by the government.

11 THE COURT: It is in evidence by the government
12 and you may argue it. If it is in evidence now and it is on
13 the record that has been admitted into evidence, you may argue
14 that to the jury, but I am not having any further questions
15 about it.

16 Now, get the jury in.

17 MR. BERGER: I may not cross?

18 THE COURT: No. I said that. The answer is no.

19 MR. BERGER: Thank you, your Honor.

20 (Jury enters courtroom.)

21 THE COURT: Good morning, ladies and gentlemen.
22 My clerk has tried to make some adjustments and I don't know
23 whether they are going to work or not but you will see whether
24 you are comfortable by the window.

25 I am having Mr. Flanagan recalled, and have Mr.

* * *

* * *

[229]

1 gwjl 64

Healy-cross

2 Q Did you tell Mr. Cleary at any time during the
3 time you were getting these loans from him that he was making
4 a mistake in making you a loan?

5 A No, I did not.

6 Q Or in making a loan for any of your clients?

7 A No.

8 Q And everything you could you tried to reassure
9 him he was acting properly in making those loans, is that
10 correct?

11 A Yes.

12 Q And it was very important to you to reassure him,
13 wasn't it?

14 A I reassured him.

15 It was important to me to obtain loans, yes.

16 MR. MURPHY: No further questions.

17 CROSS EXAMINATION

18 BY MR. BERGER:

19 Q Mr. Healy, my name is Mr. Berger and I represent
20 Mr. Passarelli.

21 How long did you know Mr. Walter Steel?

22 A I have known him for approximately ten years,
23 twelve years.

24 Q Were you his attorney?

25 A I have handled certain matters for him, yes.

* * *

* * *

[258]

1 gwjl 93

Healy-cross

2 Q What about the check, the \$5,000 check made out
3 to Mrs. Roccario, did you see who signed that?

4 A On the back?

5 Q Yes.

6 A No, I did not.

7 Q You didn't have any discussions with Mr. Passarelli
8 at the time of filling out the Roccario application to build up
9 her assets and her income, did you?

10 A No.

11 Q You had no discussion that anything on there
12 should be changed for the benefit of the bank officer, did you?

13 A Changed from what?

14 Q Untruthful. You didn't tell Mr. Passarelli to
15 be untruthful for the benefit of the bank officer, did you?

16 A We did not discuss the truth or untruthfulness of
17 the application.

18 Q And this information, was Mr. Passarelli reading
19 it to you from a paper or from his mind?

20 A He gave it to me verbally.

21 Q With regard to the loan to 8628 Realty Corporation
22 which took place on October 20, 1975, where did you get the
23 information for that application?

24 A From Mr. Passarelli.

25 Q Did Mr. Passarelli tell you that he was a good

1 gwjl 94 Healy-cross
2 friend of Mr. Carmine Liberatore?

3 A Yes, he did.

4 Q He knew him for many years?

5 A Yes.

6 Q One of the questions on the application was
7 where does he live, is that correct?

8 A I believe there is a question.

9 Q On the financial statement.

10 You also say that you say Mr. Passarelli signed
11 that application, financial statement--withdraw the word
12 application--the financial statement in front of you?

13 A Yes.

14 Q And he gave you all the information on that finan-
15 cial statement?

16 A Essentially all the information.

17 Q Now, this loan was made to 8626 Realty Corpoation,
18 is that correct?

19 A Yes.

20 Q The financial statement that we are discussing
21 was that of Carmine Liberatore, is that correct?

22 A Yes.

23 Q Did Carmine Liberatore make an application for
24 a personal loan?

25 A I have no knowledge of Mr. Liberatore making any

gwjl 95

Healy-cross

1 application anyplace.

2
3 Q Well, did you and Mr. Passarelli fill out an
4 application for Mr. Liberatore for a personal loan?

5 A I don't believe it was for a personal loan, no.

6 Q As a matter of fact, no loan was obtained for Mr.
7 Liberatore, is that true?

8 A Personally?

9 Q That is right.

10 A No, there was not.

11 Q And nowhere did Mr. Liberatore sign a note where
12 he agreed to be personally liable to the Barclay's Bank, did
13 he?

14 A No, sir.

15 THE COURT: Can we stop now?

16 MR. BERGER: Yes, your Honor.

17 THE COURT: We will adjourn for lunch until two
18 o'clock.

19 MR. MURPHY: Just one moment.

20 THE COURT: The jury is excused.

21 MR. MURPHY: Until what time?

22 THE COURT: Two o'clock.

23 (Jury leaves courtroom.)

24 MR. MURPHY: On the requests to charge, I am
25 having them typed up at my office. I tried to write them out

* * *

* * *
French-direct

275

1 gwjl 110

2 Q (Continuing)--in connection with a federal sen-
3 tence?

4 A Yes, I am.

5 Q Mr. French, do you know an individual named
6 Gustavopassarelli?

7 A Yes, I do.

8 MR. BERGER: Identification conceded, your Honor.

9 Q How long have you known Mr. Passarelli?

10 A Ten, twelve years.

11 Q Mr. French, did there come a time in the fall of
12 1975 when you talked to Mr. Passarelli about a loan in your
13 name at Barclay's Bank?

14 A Yes.

15 Q Was this a telephone conversation or personal
16 conversation?

17 A I don't remember.

18 Q Do you remember if anyone else was there if
19 it was a personal conversation?

20 A No, not that I remember.

21 Q What did you say to Mr. Passarelli and what did
22 he say to you?

23 A He asked me if he could use my name to get a
24 loan, and I said he could because he had done the same for
25 me before.

1 gwjl 111

French-direct

2 Q Do you recall anything else about that conver-
3 sation?

4 A Not offhand.

5 Q Mr. French, I show you what is in evidence as
6 Government's Exhibit number 15, and that is an application
7 for personal credit from the Barclay's Bank of New York.

8 Did you sign Government's Exhibit 15?

9 A It looks like my signature but I don't know if
10 I signed it. I don't remember.

11 Q I show you what has been marked as Government's
12 Exhibit 15-A. That is an application for credit from the
13 Barclay's Bank. Did you sign that?

14 A No.

15 Q Mr. French, these applications for personal credit
16 from Barclay's Bank are for a loan in your name. Did you get
17 the proceeds of that loan?

18 A Well, the check came and I signed the check
19 and I gave the check to Gus.

20 Q Did you have anything to do with actually obtaining
21 that loan?

22 A No.

23 Q Do you recall filling out any application for per-
24 sonal credit with Barclay's Bank?

25 A Not on that loan, no.

gwjl 112

French-direct

1 Q Mr. French, in the fall of 1975, were you married?

2 A No.

3 Q Therefore, you were not married to someone named
4 Carol?

5 A Right.

6 Q Were you at that time a full time employee of
7 the Westchester Avenue Marina?

8 A No.

9 Q Had you been employed there for the past five
10 years?

11 A Full time, no.

12 Q Did you earn in the year 1975 \$15,000 from the
13 Westchester Avenue Marina?

14 A No.

15 Q Did you have a total income of \$18,000 in 1975?

16 A No.

17 Q How about 1974?

18 A Never.

19 Q In the fall of 1975, did you have a life insurance
20 policy of \$10,000?

21 A No.

22 Q In the fall of 1975, did you have a personal
23 checking account at County Trust?

24 A No.

25

1 gwjl 113

French-direct

2 Q Mr. French, have you ever had a life insurance
3 policy in the value of \$10,000.

4 A It is possible I could have one.

5 Q Do you recall having a life insurance policy for
6 \$10,000?

7 A No.

8 Q In the fall of 1975, were you making monthly
9 payments on real estate of \$200 a month?

10 A No.

11 Q In the fall of 1975, did you owe money to anybody?

12 A Yes.

13 Q Do you recall the amount?

14 A No.

15 Q Can you give us an approximate figure?

16 A I'd have to put it down on paper and add it up.
17 \$5,000.

18 Q Mr. French, you testified just before you signed
19 a Barclay's check, is that correct?

20 A Yes.

21 Q And did you sign that check in anybody's presence?

22 A I remember signing it. It was over at Gus'
23 place. I don't know if anybody was there when I signed it.

24 Q But you do recall giving the check back to Mr.
25 Passarelli?

1 gwjl 114

French-direct

2 A Yes.

3 Q Mr. French, did you ever own a 1973 Continental
4 Mark IV?

5 A No.

6 Q Did you ever buy a Lincoln Continental from Mr.
7 Gus Passarelli?

8 A No.

9 Q In fact, Mr. French, in the fall of 1975, did you
10 have a driver's license?

11 A No.

12 Q Prior to the fall of 1975, when was the last time
13 you had a valid driver's license, do you recall?

14 A Maybe '74. I don't remember when it expired.

15 Q Prior to the time that Mr. Passarelli told you
16 or asked you about using your name for a loan application,
17 at that time did you have a discussion with Mr. Gus Passarelli
18 about buying a car from him?

19 A We had discussed the matter.

20 Q When was that?

21 A Around the same time.

22 Q At the time that this loan was consummated,
23 did you purchase a car from Mr. Passarelli?

24 A No.

25 Q You didn't have a valid driver's license at that

gwjl 115

French-direct

1 time, did you?

2 A No.

3 Q Mr. French, did there come a time in the fall of
4 1975 when you discussed with Mr. Passarelli obtaining another
5 loan in addition to the loan we have been talking about?

6 A Yes.

7 Q And do you recall if that was a personal conversa-
8 tion or on the telephone?

9 A I don't recall which.

10 Q Do you recall what you said to Mr. Passarelli
11 and what he said to you?

12 A I said to Gus that since I had given him the
13 money, the loan that I acquired in my aname--

14 Q You had what?

15 A I had acquired a \$5,000 loan in my name, that I
16 needed some money.

17 Q What did you say?

18 A Gus said he would like to help me but he needed
19 money himself for his mortgage. So he said, "If somebody
20 will sign for you, I will get you a loan, I will give it to
21 my lawyer and get you a loan."

22 Q What, if anything, did you do in order to secure
23 that loan?

24 A I asked a buddy of mine if I could use his name.
25

gwjl 116

1

2

Q Who was that?

3

A Tom Powers.

4

Q Did you fill out a loan application in Mr. Powers' name?

5

6

A Yes, I did.

7

8

9

Q Did you have a discussion with Mr. Power's about the information on that loan application before you filled it out or while you were filling it out?

10

11

A He just told me to do whatever I want, go ahead. He didn't want to get stuck paying.

12

13

14

Q Mr. French, did you have a discussion with Mr. Powers about the information you were going to put down on the loan application?

15

16

17

A No.

18

19

20

21

22

23

24

25

Q What, if anything, did you do with the loan application after you filled it out?

A Took it over to Port Chester.

Q Where in Port Chester?

A To the marina.

Q Whose marina?

A Gus' marina.

Q Where did you leave it?

A On the desk.

Q Whose desk?

1 gwjl 117

French-direct

2 A Gus' desk.

3 Q Did there come a time you had a conversation with
4 Mr. Passarelli about that application and about the loan
5 proceeds from that application?

6 A Next we got the money.

7 Q You got the check?

8 A That's right.

9 Q Who gave you the check?

10 A Gus gave me the check.

11 Q Gus Passarelli?

12 A Right.

13 Q Did you have a conversation at the time with Mr.
14 Passarelli?

15 A Not really. I just said, "You got the check."

16 He said, "Yes."

17 I took the check and signed it and took half the
18 money.

19 Q What did you do with the other half of the money?

20 A I gave it to Gus.

21 Q Mr. French, I show you what is in evidence as
22 Government's Exhibit 23. It is an application for personal
23 credit in the name of Thomas Powers. Did you fill out that
24 application?

25 A Yes, I did.

1 gwjl 118

French-direct

2 Q And that is the application that you testified
3 about here this afternoon?

4 A Yes.

5 Q And that is the application that you left on
6 Mr. Passarelli's desk?

7 A Yes.

8 Q I show you what is in evidence as Government's
9 Exhibit number 24, and I ask you if you have seen that form
10 before.

11 A I don't recall seeing it.

12 Q Government's Exhibit 24 in evidence is an install-
13 ment note and security agreement. Do you recall filling it
14 out?

15 A No.

16 Q Is that your signature where it says Thomas
17 Powers on it?

18 A I doesn't look like it.

19 Q I show you what is Government's Exhibit 25 in
20 evidence, a Barclay's Bank check in the name of Thomas
21 Powers, and I ask whether or not you have seen this check
22 before.

23 A Yes.

24 Q And is that the check that Mr. Passarelli gave
25 to you?

1 gwjl 119

French-direct

2 A Yes, it looks like it.

3 Q Is your name on that check at all?

4 A My name?

5 Q You signature. I'm sorry.

6 A It looks like I signed Tom Powers.

7 Q It looks like you signed Tom Powers. Did you sign
8 Westchester Avenue Marina?

9 A I don't recall.

10 Q And did you sign "Deposit for Westchester Avenue
11 Marina"?

12 A No.

13 Q Please speak louder.

14 A No.

15 Q Mr. French, have any representations been made to
16 you about whether or not you would be prosecuted in connection
17 with the Thomas Powers check, the Thomas Powers bank loan?

18 A You told me I would not be prosecuted.

19 MR. WEINBERG: No other questions, your Honor.

20 MR. MURPHY: No questions.

21 CROSS EXAMINATION

22 BY MR. BERGER:

23 Q Mr. French, my name is Mr. Berger and I represent
24 Mr. Passarelli.

25 You testified that prior to this loan being

1 gwjl 120

2 taken out in the name of Carl French you spoke to Gus about
3 a loan in his name at the bank, that Gus asked you if he
4 could use your name and you said, yes, "He had done the same
5 for me before."

6 Did that mean that you had used his name or did
7 you mean something other than that?

8 A When I borrowed money from the bank, Gus had
9 co-signed a note for me a few years before.

10 Q In other words, you went into a bank, borrowed
11 money and Gus Passarelli was your co-signer?

12 A Yes.

13 Q Do you recall what bank that was in?

14 A First Westchester National.

15 Q Now the Barclay?

16 A Now the Barclay.

17 Q And did you repay that loan?

18 A Not really. Gus repaid the loan.

19 Q Did you receive the proceeds of that loan?

20 A Yes.

21 Q But Gus repaid it?

22 A Yes.

23 MR. WEINBERG: Your Honor, the fact that the
24 defendant and Mr. French may have done this before I don't
25 think is relevant.

1 gwjl 121

French-cross

2 THE COURT: You are a little late, aren't you?
3 It's already been testified to.

4 Q You were shown Exhibit 15, which is an application
5 which purports to bear your name and you were asked whether or
6 not you signed it and you testified you don't know if you
7 signed it, you don't remember.

8 Do you know if you did not sign it?

9 A No, I don't.

10 Q If Gus had asked you, would you have signed it?

11 A Yes.

12 Q Do you recall signing perhaps a blank application
13 for a loan at the Barclay's Bank and delivering it to Gus?

14 A I don't remember.

15 Q You don't remember?

16 A No.

17 Q Do you know an individual by the name of Mr.
18 Jerome Healy?

19 A Yes.

20 Q Have you ever met him?

21 A Yes.

22 Q At the time of this loan on or about November 12th
23 of 1975, did you ever speak to Mr. Healy?

24 A I spoke to him but I hadn't met him.

25 Q You had not met him but you spoke to him.

gwjl 122

1 A I didn't meet him in person, but I had spoken to
2 him. I think I spoke to him over the phone.

3 Q As a matter of fact, you received a phone call
4 from Mr. Passarelli and he told you that a Mr. Healy wanted
5 to speak to you, didn't he? Do you recall that?
6

7 A Yes.

8 Q And a man got on the phone and he said, "Hello,
9 my name is Mr. Healy"?

10 A Yes.

11 Q Then he started asking you certain questions,
12 didn't he?

13 A Yes. I gave him some information for the bank
14 loan.

15 Q And that information is the information that he
16 said he was putting on a financial statement?

17 A I tell you, he just asked me, you know.

18 Q He asked you questions?

19 A He asked me questions.

20 Q About your earnings, about your marital relation-
21 ship, he asked you where you worked, how much you made, whether
22 you had a personal account, whether you were paying rent or
23 money on real estate, whether you owed any money and
24 questions like that? Didn't he ask you questions like that?

25 A He asked me a lot of questions. I don't remember

1 gwj1 123

French- cross

2 if ' asked me exactly what you said.

3 Q The answers that you gave him, were they truthful?

4 A The answers I gave him, yes.

5 MR. BERGER: May I have Government's Exhibit 15?

6 (Handed to Mr. Berger.)

7 Q I show you what has been marked as Government's
8 Exhibit 15 and ask you whether certain of the questions on
9 this application were asked of you by Mr. Healy.

10 A Some of the questions he asked me, my name,
11 address, where I live, social security number he asked me.

12 Q Did he ask about your earnings?

13 A He said something, but I wasn't working at the time.

14 Q You told him that?

15 A I told him I wasn't working.

16 Q Therefore, although you told Mr. Healy you weren't
17 working and you gave him information on that application,
18 that application does not contain the information you gave
19 Mr. Healy, does it?

20 A No. I didn't make \$15,000, I wasn't working at
21 Westchester Marina.

22 Q Mr. Gustavo Passarelli never asked you those
23 questions, did he?

24 A No. He called me that day and told me, "Hang on
25 the phone and talk to Mr. Healy."

1 qwj1 124

French-cross

2 Q And he didn't hear what you told Mr. Healy, did
3 he?

4 A Not that I know of.

5 Q Are you sure that the signature Carl French on
6 this note is not yours?

7 A That is not the way I write.

8 Q Did Mr. Passarelli ever tell you that he signed
9 your name to a note?

10 A Not that I recall.

11 Q Your relationship with Mr. Passarelli was such if
12 he said, "I am going to sign your name to a note," you would
13 have authorized it, wouldn't you?

14 A Yes.

15 Q Do you feel obligated to pay this loan?

16 MR. WEINBERG: Objection, your Honor.

17 THE COURT: Sustained.

18 Q Have you offered the bank to make repayment?

19 THE COURT: Has he what?

20 Q Have you offered the bank to make repayment of
21 this loan?

22 A Yes.

23 MR. WEINBERG: Objection, your Honor.

24 It doesn't matter.

25 THE COURT: Objection sustained.

1 gwjl 125

French-cross

2 MR. BERGER: I except, your Honor, on the same
3 basis.

4 Your Honor, excuse me. At five o'clock I would
5 like to make an additional pro offer on that question.

6 Q When the loan was taken out in your name, did
7 you intend to repay it?

8 MR. WEINBERG: Objection, your Honor.

9 THE COURT: Sustained.

10 Mr. Berger, you have, as you indicated and you
11 know, a right to make your pro offer. When I bar evidence,
12 don't get into the business of your trying to ask the same
13 question in a different form. All it does is to make for
14 needless discussion between us.

15 MR. BERGER: Your Honor, may I have a side bar?

16 THE COURT: No, we don't need a side bar about
17 that. You know what you are supposed to do. You will have
18 your opportunity. Right now just follow the rulings I make.

19 Q You testified that you had a discussion with Mr.
20 Passarelli with regard to a loan in the name of Thomas
21 Powers, is that correct?

22 A Yes.

23 Q You also testified that you filled out Tom
24 Powers' application, the application in his name, but you
25 didn't discuss with him any of the information, is that

1 gwjl 126

French-cross

2 A That's correct.

3 MR. BERGER: May I have this document marked
4 as Defendant Passarelli Exhibit A for identification.

5 (Loan application marked Defendant Passarelli
6 Exhibit A for identification.)

xxxx

7 THE COURT: You asked a question and asked did
8 he discuss with him--

9 Q You testified you didn't discuss with Mr. Powers
10 his financial information.

11 A No, I didn't.

12 THE COURT: I didn't know who the "him" was.

13 Q I show you what has been marked Defendant's
14 Exhibit A and ask you whether you recognize this document.

15 MR. MURPHY: Your Honor, I think there will be
16 some confusion in the marking unless we have--

17 THE COURT: The Clerk will take care of it. He
18 will keep them accurately. Even though Mr. Berger says
19 Defendant's Exhibit A, he will make sure it is Defendant
20 Passarelli Exhibit A.

21 MR. MURPHY: Thank you.

22 A I don't remember. It is so long ago.

23 Q Is that your handwriting?

24 A It's messy, and I have a very messy handwriting.
25 That's all I can tell you.

gwjl 127

French-cross

1 Q Can you identify that? You said it was so long
2 ago.
3

4 A Mr. Berger, I can't tell you something--it looks
5 exactly like the way I scribble and everything else. I just
6 don't remember.

7 Q How do you remember it is so long ago?

8 A Because it must be. I haven't done it lately.

9 Q Would you say that you wrote that?

10 A It's possible, yes.

11 MR. BERGER: I offer this in evidence.

12 MR. WEINBERG: I object, your Honor.

13 THE COURT: You have not seen it. You mean you
14 object without seeing it? You may be right, but I would
15 suggest you ought to look at it.

16 MR. WEINBERG: I object, your Honor. May I state
17 the grounds for my objection?

18 (Document handed to the Court.)

19 THE COURT: The objection is sustained.

20 What I don't understand, unless I have missed
21 something, is why you can't elicit whatever information it is
22 that you want on this document from him by asking him questions.

23 MR. BERGER: I have asked him the questions and
24 he didn't remember.

25 THE COURT: What question did you ask him that he

1 gwjl 128

2 didn't remember?

3 MR. BERGER: He claimed he made up the financial
4 information on Powers.

5 THE COURT: Did you ask him whether he has been
6 in touch with Mr. Powers?

7 MR. BERGER: I asked him that.

8 THE COURT: What did he say?

9 THE WITNESS: He was in touch with Mr. Powers
10 and he got permission.

11 THE COURT: What is there that--ask him again. I
12 have missed the question.

13 Q Mr. French, the financial information on the
14 application, did you get that information from Mr. Powers?

15 A Yes.

16 Q You did?

17 A No. I put it down. I didn't get nothing from
18 Powers. I wrote it all.

19 Q You did not get any of that information from .
20 Mr. Powers?

21 A Nothing at all. The only thing Tom Powers gave
22 me was his social security number.

23 Q You didn't tell Mr. Passarelli that you didn't
24 get any of that information from Mr. Powers, did you?

25 A There was no reason to tell him.

1 gwjl 129

French-cross

2 Q You didn't tell Mr. Passarelli that you filled out
3 the application in Mr. Powers' name, did you?

4 A Not that I recall.

5 Q This application was filled out and signed and
6 then brought to Mr. Passarelli's office, is that correct?

7 A Yes.

8 Q And you left it on his desk?

9 A Yes.

10 Q You didn't tell him that the information was
11 false, you don't even know if he read it, is that correct?

12 A I have no idea.

13 THE COURT: Maybe I have missed a link here. How
14 did you get involved in filling out the application? Did you
15 testify to that?

16 THE WITNESS: I asked Gus if I could get some
17 money for myself and Gus said he needed all the money he
18 could for his mortgage right now but to get a friend of mine
19 to sign and he would give it to his lawyer and his lawyer
20 would get a loan for him and I would get my money that way.

21 THE COURT: I see. So that is how you got this
22 name of this friend Powers and filled out the application
23 and gave it to Mr. Passarelli?

24 THE WITNESS: Yes, your Honor. I left it on his
25 desk in his office.

1 gwjl 130 French-cross

2 Q You didn't tell Mr. Passarelli that you signed
3 the application?

4 A There was no reason to tell him. All I did was
5 drop it off and that was it. I left.

6 Q Didn't Mr. Passarelli tell you to speak to Mr.
7 Powers and get permission and if you got the permission to
8 get the proper information?

9 A Mr. Passarelli just told me to find somebody that
10 was going to sign for a note.

11 Q To find Powers.

12 A And I got a hold of my friend Tommy and Tommy
13 said, "Go ahead."

14 Q Didn't you testify that Mr. Passarelli asked you
15 to see if Powers would do it?

16 A Asked me? No, I brought Tommy as my friend, not
17 Gus' friend.

18 Q You didn't tell anything to Mr. Passarelli from
19 which he could determine there was anything false on the
20 financial statement, did you?

21 A I didn't tell him anything. If he looked at it,
22 I don't have no idea. I just filled it out, put it in an
23 envelope, I went over to marina, he was busy. I said, "I have
24 an application from Tom Powers."

25 He said, "I'm busy. Leave it on my desk. I'll

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French-redirect

2 give it to the lawyer."

3 Q Did he say Mr. Healy?

4 A I thought Mr. Healy is a lawyer.

5 Q Did he say Mr. Healy?

6 A No, he didn't say Mr. Healy, but that's what he
7 calls him, Mr. Healy.

8 MR. BERGER: No further questions.

9 REDIRECT EXAMINATION

10 BY MR. WEINBERG:

11 Q Mr. French, for how many years have you known Gus
12 Passarelli?

13 A Ten, twelve years.

14 Q Have you been a personal friend of his in those
15 ten or twelve years?

16 A Yes.

17 Q And you have worked for him in those ten or
18 twelve years?

19 A Yes.

20 Q How did you get down to the courthouse here today?

21 A With Mr. Passarelli.

22 Q Pardon me?

23 A With Mr. Passarelli.

24 Q How did you get to the courthouse yesterday?

25 A Mr. Passarelli.

* * *
French-redirect

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1 gwjl 143

2 A No, I didn't.

3 Q And Government's Exhibits 15-A and 15, which are
4 Barclay Bank loan applications in your name, contain false
5 information, is that correct?

6 A Yes, they do.

7 MR. WEINBERGER: No other questions, your Honor.

8 MR. MURPHY: No questions.

9 MR. BERGER: No further questions.

10 THE COURT: All right, Mr. French, thank you.

11 (Witness excused.)

12 THE COURT: Call your next witness.

13 MR. WEINBERG: The government calls Thomas Powers.

14 T H O M A S P O W E R, called as a witness by the govern-
15 ment, being first duly sworn by the Clerk, testified
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. WEINBERG:

19 Q Mr. Power, let me ask you to please keep your
20 voice up at all times so everybody in the courtroom can
21 hear you.

22 Mr. Power, how old are you?

23 A 40 years old.

24 Q Mr. Power, have you ever taken out a loan with
25 the Barclay Bank of New York?

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Power-direct

1

2

A No, sir.

3

4

Q Mr. Power, did you ever purchase a boat from
Gustavo Passarelli?

5

6

A No, sir.

7

8

Q In the fall of 1975, did you have income to
purchase a boat if you wanted to?

9

10

A No.

11

12

Q Mr. Power, what is your profession or occupation?

13

14

A I'm a carpenter by trade.

15

16

Q Mr. Power, in the fall of 1975, did you live
at 9 Stevens Street, White Plains, New York?

17

18

A Yes, I did.

19

20

Q Mr. Power, in the fall of 1975, were you working
for Gus' Boat Sales?

21

22

A No, sir.

23

24

Q And had you worked at Gus' Boat Sales for the
past two years from 1975 going back?

25

26

A Not at Gus' Boat Sales. I never worked at Boat
Sales.

27

28

Q Did you earn in 1975 approximately \$13,750?

29

30

A No, sir.

31

32

Q Did you earn that amount in 1974?

33

34

A No, sir.

35

36

Q Did you have income from a wife in 1974 of \$2,200?

37

1 gwjl 145 Power-direct

[310]

2 A No, sir.

3 Q Are you married?

4 A No, sir.

5 Q Did you have income in 1975 from anybody else
6 who was helping you to support yourself of \$2,200?

7 A - No, sir.

8 Q Mr. Power, I show you Government's Exhibit 23
9 in evidence. I ask whether or not the signature of Thomas
10 Powers on that loan application is yours.

11 A No, sir.

12 Q Prior to being shown that loan application by an
13 FBI agent, had you ever seen it?

14 A No, sir.

15 Q I show you what is received in evidence as
16 Government's Exhibit number 24. Did you sign that form?

17 A No, sir.

18 Q And prior to possibly being shown it by an FBI
19 agent, have you ever seen that document?

20 A No, sir.

21 Q I show you what is in evidence as Government's
22 Exhibit number 25. I ask you if a check to Thomas Powers--
23 prior to being interviewed by an FBI agent, did you see that
24 check?

25 A No, sir.

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Power-direct

2 Q Look at the back of the check and tell us if
3 any of the handwriting on the back of that check is yours.

4 A No, sir.

5 Q Mr. Power, I show you what has been marked for
6 identification as Government's Exhibit 44 and I ask you
7 whether or not you have ever seen that check before. Look at
8 it, please. Look at the entire check.

9 A No.

10 Q The signature Thomas Powers in the back of the
11 check, is that your signature?

12 A No, sir.

13 Q You never cashed this check?

14 A No, sir.

15 MR. WEINBERG: Excuse me one second, your Honor.

16 (Pause.)

17 Q Mr. Power, were you married in 1975?

18 A No, sir.

19 MR. WEINBERG: No other questions, your Honor.

20 MR. MURPHY: No questions.

21 CROSS EXAMINATION

22 BY MR. BERGER:

23 Q Mr. Power, my name is Mr. Berger. I represent Mr.
24 Passarelli.

25 THE COURT: Will it take more than five minutes?

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Power-cross

2 MR. BERGER: No, your Honor.

3 THE COURT: Otherwise we will take a phone call.

4 Q In the fall of 1975 did you receive a telephone
5 call from one Carl French asking to fill an application
6 in your name?

7 A No, sir.

8 Q Did you know that an application had been put in
9 in your name?

10 A No, sir.

11 MR. BERGER: No further questions.

12 THE COURT: Anything further?

13 MR. WEINBERG: Nothing else, your Honor.

14 THE COURT: Thank you, Mr. Power. You may step
15 down.

16 (Witness excused.)

17 THE COURT: We will have our recess now and have
18 your next witness at the close of the recess.

19 (Recess.)

20 (Jury present.)

21 R I C H A R D F. F L E T C H E R, called as a witness
22 by the government, having been duly sworn by the Clerk,
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. WEINBERG:

* * *

* * *
Ccnforti-direct

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2 A Yes.

3 Q Did Giuseppe Passarelli make a telephone call?

4 A Yes, he did.

5 Q Is this after you had advised Mr. Giuseppe Passarelli
6 of his rights?

7 A Yes.

8 Q Do you know who he telephoned?

9 A He told me he was going to telephone his attorney.

10 Q Did you then get on the telephone with the person
11 he had called?12 A Yes. Mr. Passarelli made a telephone call and I
13 assumed it was his attorney and when I got on the line the
14 individual identified himself as Gus Passarelli.15 Q What did Mr. Gus Passarelli say to you at that
16 time or what did you say to him?17 A Mr. Passarelli asked me why I was bothering his
18 brother. I told Mr. Passarelli I wanted to talk to his
19 brother because a loan had been taken out at Barclay's Bank
20 in his name. Mr. Passarelli told me I should not bother his
21 brother about the loan, that he knew all about it and I should
22 come to see him.

23 Q Did you then come to see him?

24 A At that time I told Mr. Passarelli if I had time
25 that afternoon I would stop by his marina to talk about the

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Conforti-direct

2 loan.

3 Q Did you stop by his marina that day?

4 A Yes, I did.

5 Q Were you with anybody else?

6 A Yes, I was with Special Agent Smith.

7 Q What did you say to Mr. Passarelli initially?

8 A When I first met Mr. Passarelli, it was in the

9 boatyard. He then took us to his office, which is a portable

10 unit on his marina. When we first entered the portable unit.

11 Mr. Passarelli started rambling about the Giuseppi Passarelli

12 loan. At this time I stopped him and told him that I did not

13 wish to hear about the loan nor hear about anything else

14 until I properly advised him of his rights, which I did at

15 that time.

16 Q And what did you say to Mr. Gustav^o, Passarelli?

17 A I gave Mr. Passarelli a form entitled "Interrogation

18 Advice of Rights," which has his rights on it for him to read.

19 Mr. Passarelli read the form, he told me he understood his

20 rights. At this time I explained to him that he did not

21 have to talk to us if he did not wish to, that he had the

22 right to have an attorney present if he so desired, that

23 anything he said could be used against him in a court of law.

24 I also told him that if he decided to answer questions he

25 could stop at any time and terminate the interview.

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1
2 MR. Passarelli told me he understood all of
3 this and was willing to proceed. I then asked him if he
4 wanted to sign the waiver of rights. He indicated that he did
5 not wish to sign anything at this time but was willing to
6 answer questions.

7 Q Did you then proceed to ask him questions?

8 A Yes, I did.

9 THE COURT: All right. What I have just told
10 you about the conversation with Mr. Cleary I now apply to his
11 conversation with Mr. Passarelli. You are to consider it only
12 in reference to Mr. Passarelli and not in regard to Mr. Cleary.

13 All right.

14 Q Mr. Conforti, did you discuss at this time with
15 Mr. Gustavo Passarelli certain loans that he had obtained
16 through Mr. Healy?

17 A Yes, I did.

18 Q Please relate to the jury what Mr. Passarelli
19 said to you at this time.

20 A Mr. Passarelli told me that he had met Mr. Healy
21 some three or four years ago when Mr. Healy was trying to
22 purchase a car. Mr. Passarelli indicated to me that Mr.
23 Healy had given him a \$5,300 bad check and that Mr. Passarelli
24 wanted this money from Mr. Healy in view of the fact that he
25 was having problems with his marina.

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2 Mr. Passarelli told me that he asked Mr. Healy
3 for this \$5,300 and at this time Mr. Healy told Mr. Passarelli
4 or asked Mr. Passarelli if he was having problems with his
5 marina. Mr. Passarelli indicated that he was having problems
6 with his marina. Mr. Healy then related to Mr. Passarelli
7 that he had a friend in New York where he could arrange for
8 this friend to take a second mortgage on Mr. Passarelli's
9 property. Mr. Passarelli told me that he was supposed to
10 receive \$32,000 through Healy from this friend.

11 However, he never received any of it.

12 Q Did you discuss with Mr. Passarelli any loans
13 that were taken out through Barclay's Bank?

14 A Yes, I did.

15 Q And what was that discussion?

16 A Mr. Passarelli told me that Mr. Healy informed
17 him at this time that he had an individual at Barclay's Bank
18 of New York where he thought he could obtain loans for Mr.
19 Passarelli.

20 Mr. Passarelli indicated to me that Mr. Healy
21 told him that he would have to get a certain amount of the
22 proceeds from each loan because he had to take care of the
23 individual who was making the loans.

24 Mr. Passarelli then told me that although Mr.
25 Healy made this statement, he felt that Mr. Healy was just so

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Conforti

2 to speak, blowing off steam and that he really wasn't kicking
3 back any monies to the individual making the loans in the
4 bank.

5 We then proceeded to go on loan by loan regarding
6 these loans at Barclay's Bank in New York.

7 Q Did you discuss with him a loan in the name of
8 Marie Roccario?

9 A Yes, I did.

10 Q And what did Mr. Gustavo Passarelli say about
11 that loan?

12 A Mr. Passarelli told me that Marie Roccario was his
13 mother-in-law. He told me that he was having problems with
14 an overdue note on this marina and that he had asked his
15 mother-in-law if she would give him permission to take a loan
16 out in her name, which she did.

17 Mr. Passarelli told me that the loan was initially
18 to be for home repairs. However, since his mother-in-law lived
19 with him a good portion of the time in Port Chester, that he
20 used the proceeds of this loan for his marina. However, later
21 on in time he used money from his own personal funds to make
22 the home repairs.

23 Q Did you discuss with him a loan to the Westchester
24 Avenue Marina, Inc.?

25 A Yes, I did.

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2 Q And what did he say about that loan, if you
3 recall?

4 A Mr. Passarelli told me that again he received
5 a loan for the marina through Mr. Healy which was obtained
6 at Barclay's Bank of New York.

7 Q Did you discuss a loan in the name of 8626
8 Realty Corporation?

9 A Yes, I did.

10 Q And what was said about that loan?

11 A Mr. Passarelli indicated to me that one day he
12 was sitting in his office at his marina and he received a
13 telephone call from Mr. Healy. Mr. Healy asked Mr. Passarelli
14 if his brother, Giuseppe, was the vice president of 8626
15 Realty Corporation. Mr. Passarelli informed Mr. Healy that
16 Giuseppe was not the vice president of this corporation.
17 Mr. Passarelli then told me that Mr. Healy asked him if
18 there were any other officers of 8626 Realty Corporation.

19 Mr. Passarelli informed me that he told Mr.
20 Healy that Carmine Liberatore was once an officer of 8626
21 Realty, however, was no longer an officer at this time.

22 Mr. Passarelli told me that Mr. Healy began
23 asking him questions regarding Mr. Liberatore's background.
24 Mr. Passarelli told me that he received a loan to 8626 Realty
25 Corporation in the amount of \$5,000, which was obtained from

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2 Barclay's Bank of New York.

3 Q Did Mr. Passarelli say whether or not he had
4 called up Carmine Liberatore in order to get information about
5 Mr. Liberatore's background to give to Mr. Healy?

6 A No, he did not.

7 Q Did you have a discussion with Mr. Gustavo
8 Passarelli about a loan in the name of Carl French?

9 A Yes, I did.

10 Q And what was said about Mr. French's loan?

11 A Mr. Passarelli told me that Carl French was having
12 problems with his probation officer insofar as he wasn't
13 making support payments. Mr. Passarelli told me that Carl
14 French came to him with his problem and that he told Mr.
15 French that he thought he could get a loan through Mr. Healy
16 at Barclay's Bank of New York. Mr. Passarelli told me he
17 instructed Mr. French to go to any branch of Barclay's Bank,
18 pick up a loan application and to bring it back to the marina.

19 Mr. Passarelli told me that Mr. French brought
20 back an application which was partially filled out and that
21 Mr. Healy filled out the remainder of this application.
22 Mr. Passarelli indicated to me that a loan in the amount of
23 \$5,000 was obtained from Barclay's Bank of New York, payable
24 to the order of Carl French.

25 Mr. Passarelli told me that he gave Mr. French

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1 approximately \$2,400 from this loan, kept approximately \$1,600
2 for himself, since he said Mr. French owed him money, and
3 gave Mr. Healy approximately \$600 of the proceeds for
4 getting the loan.
5

6 Q Did you have a discussion regarding a loan to
7 Giuseppi Passarelli?

8 A Yes.

9 Q What did Mr. Passarelli say about that loan?

10 A Mr. Passarelli told me he inquired of Mr. Healy
11 as to what had happened to the money that was supposed to
12 come from Mr. Steel. Mr. Passarelli told Mr. Healy he had
13 to be in the courthouse in White Plains the next day in order
14 to save his property from foreclosure and he indicated to
15 Mr. Healy that he would hope Mr. Healy would come up with some
16 money by the next day since he had not given him any of the
17 Steel money. Mr. Passarelli told me that the next day he met
18 Mr. Healy on the courthouse steps in White Plains, New York,
19 and at this time Mr. Healy had a check payable to his
20 brother in the amount of \$5,000 and also had a check payable
21 to himself in the amount of \$5,000, both checks being checks
22 of Barclay's Bank of New York.

23 Mr. Passarelli indicated to me he had no idea that
24 Mr. Healy was going to obtain a check for his brother Giuseppi
25 prior to meeting Mr. Healy at the courthouse steps that

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2 morning.

3 Q Did you have any discussion about a loan in the
4 name of Thomas Power?

5 A Yes, I did.

6 Q And what did Mr. Passarelli say about that loan?

7 A Mr. Passarelli told me that an individual by the
8 name of Thomas Powers purchased a boat from him. I then asked
9 Mr. Passarelli if he was certain that Mr. Powers purchased
10 a boat, and he said he was certain. He then proceeded to
11 take me outside of the place where we were having an inter-
12 view. He took me to where his boats are stored, and showed
13 me a boat which was sitting on a rack and told me that was
14 Mr. Powers' boat. I asked him why Mr. Powers did not have the
15 boat in his possession, why it was in the boatyard. Mr.
16 Passarelli told me that Mr. Powers had not picked up the boat
17 as of yet.

18 We then went back to the place where we were
19 conducting the interview and I asked Mr. Passarelli again
20 if Mr. Powers had purchased the boat and he said, yes, that
21 was his boat that he had just showed me outside.

22 Mr. Passarelli then placed a telephone call to
23 his bookkeeper and told his bookkeeper--well, he told his
24 bookkeeper if she could find the check that was payable to
25 Thomas Powers and if she could would she bring the check over.

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1 We then continued with the interview and Mr.
2 Passarelli related to me that Mr. Healy was on his back for
3 this loan. Mr. Passarelli told me that he had given Mr.
4 Healy \$800 initially for the Powers loan. However, Mr. Healy
5 said that this loan was harder to get through than the other
6 loans and he wanted an additional \$800. Mr. Passarelli
7 told me he refused to give Mr. Healy any more money and he
8 became so enraged with Mr. Healy that he gave all of the
9 proceeds back to Mr. Healy on the Power loan, told Mr. Healy
10 to go to Barclay's Bank, pay off the loan in full and clear
11 Mr. Power's name.
12

13 Some time during the discussion of the Mr. Power
14 loan, his bookkeeper appeared in the office and handed him
15 a check. Mr. Passarelli gave me this check. I looked at it.
16 It was a check payable to Thomas Powers in the amount of
17 \$5,000. In the lower left-hand corner of the check was a
18 notation "refund for boat."

19 I looked at the check, turned it over and looked
20 at the back of the check and noticed that the check had not been
21 negotiated. I asked Mr. Passarelli what was going on since
22 the check was not negotiated, and had never gone through a
23 bank.

24 Mr. Passarelli at this time took the check from
25 my possession. I asked Mr. Passarelli if I could have a

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1 Xerox copy of the check. He declined to give me a Xerox
2 copy of the check.
3

4 Q Mr. Conforti, I want you to look at what has been
5 marked for identification as Government's Exhibit 44.

6 Does that look like the check that you have just
7 described that Mr. Passarelli showed you in March of 1976?

8 A It does look like the check, but I can't say
9 honestly that this is the check he showed me on that day.

10 MR. WEINBERG: Your Honor, based on a stipulation
11 that this is a check Mr. Gustavo Passarelli mailed to the
12 United States Attorney's office, I offer in evidence
13 Government's Exhibit 44.

14 MR. BERGER: No objection.

15 (Government's Exhibit 44 for identification received
16 in evidence.)

xxxx

17 Q Mr. Conforti, showing you Government's Exhibit
18 44 in evidence, does it appear that that check has ever
19 been cancelled by a bank?

20 A No, it does not.

21 Q And the stamp on this check which says "paid,"
22 does that look--based on your experience as an agent who has
23 investigated bank cases in the past, does that appear to
24 you to be an actual endorsement that a bank would put on
25 a check?

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1 MR. BERGER: May it please the Court, the
2
3 defendant Passarelli will stipulate that that was not
4 negotiated through a bank.

5 THE COURT: All right.

6 Q Did you discuss with Mr. Gustavo Passarelli a
7 loan in the name of Westchester Avenue Used Cars?

8 A Yes, I did.

9 Q And what did Mr. Passarelli say about that loan?

10 A Mr. Passarelli related to me that although the
11 loan was taken out in the corporate name, Westchester Avenue
12 Used Cars, the loan was supposed to be paid back by Mr. Healy.
13 Mr. Passarelli also told me that the proceeds from this loan
14 were given to Mr. Healy to go back to Barclay's Bank of New
15 York to repay the Thomas Powers loan.

16 Q Did Mr. Passarelli say anything to you about the
17 way these loan applications were filled out?

18 A Yes. He told me that in almost every instance
19 Mr. Healy doctored up the loan applications so that they
20 would be passed on by the individual at Barclay's Bank of
21 New York who was making the loans.

22 Q Did Mr. Passarelli tell you whether or not he
23 could have gone into Barclay's Bank himself and have obtained
24 these loans?

25 A Mr. Passarelli told me that he could have never

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1 gone to Barclay's Bank himself and obtained any of the loans
2 without the assistance of Mr. Healy.

3 Q And did Mr. Passarelli tell you whether or not
4 he had ever met Mr. Cleary prior to the time any of these
5 loans had been approved by Barclay's Bank?

6 A No. He told me that the first time he met Mr.
7 Cleary was after the loans had gone through when Mr. Cleary
8 was trying to get the proceeds of the loans.

9 Q Mr. Conforti, have you had occasion to interview
10 an individual named Carl French?

11 A Yes, I have.

12 Q And did you interview Carl French on approximately
13 March 4, 1976?

14 A Yes, I did.

15 Q Do you recall where that interview took place?

16 A The first time I interviewed Mr. French the inter-
17 view took place at my office, which was then located in White
18 Plains, New York.

19 Q And what do you recall saying to Mr. French at
20 the beginning of the interview?

21 A When Mr. French came in, I introduced myself and
22 the other agent to him. I told him that I was with the FBI.
23 I told Mr. French that I wanted to talk with him regarding a
24 loan that had been taken out at Barclay's Bank of New York in
25

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1 his name. I then proceeded to advise Mr. French of his
2 Constitutional rights.
3

4 Q And what rights did you inform him of?

5 A I told Mr. French that he had the right to remain
6 silent, that anything he said to me could be used against him
7 in a court of law. I told Mr. French that he had the right
8 to have an attorney present and to have an attorney present
9 with him during the interview if he so desired. I told Mr.
10 French that if he desired to answer questions now without
11 an attorney present, he still had the right to stop answering
12 at any time until he had an attorney present.

13 Q Mr. Conforti, did you give Mr. French an advice of
14 rights form that listed all his rights?

15 A Yes, I did.

16 Q And did he sign that form?

17 A Yes, he did.

18 Q Did you then proceed to interview Mr. French?

19 A Yes, I did.

20 Q I now want to ask you about the interview. The
21 question, at any time during that interview did Mr. Carl
22 French tell you that he had spoken to Mr. Healy and that he
23 had given Mr. Healy truthful information about his background
24 and about his personal assets, family history and other
25 types of things that would be on a bank loan application?

Conforti-direct

1 gwjl 181

2 A No, he did not.

3 Q Did you interview Mr. Carl French on approximately
4 August 6, 1976?

5 A Yes, I did.

6 Q And what, if anything, did you initially say to
7 Mr. French at that time?8 A I again identified myself and the other agent who
9 was with me to Mr. French. I told him that I wanted to speak
10 to him about a loan which was taken out at Barclay's Bank of
11 New York in the name of Thomas Powers. I then again advised
12 Mr. French of his Constitutional rights.13 Q And did Mr. French agree to talk to you at that
14 time?

15 A Yes, he did.

16 Q Did he sign an advice of rights form, a document
17 which lists the Constitutional rights, and which says that he
18 waives those rights and is willing to talk to you?

19 A Yes, he did.

20 Q During that meeting with Mr. French, did Mr.
21 French mention to you or state to you in any way that he had
22 a conversation with Jerome Healy in which he gave Jerome
23 Healy truthful information about his background, family
24 history, personal assets and other type of information that
25 might be expected on a bank loan application?

1 gwjl 182

Conforti-direct

2 A No, he didn't.

3 Q Mr. Conforti, directing your attention to approxi-
4 mately October 20, 1976, at that time--withdrawn.

5 Some time in October of 1976, did you meet with
6 Mr. Gustavo Passarelli again?

7 A Yes, I did.

8 Q And what was the purpose of that meeting?

9 A The purpose of the meeting was for Mr. Passarelli
10 to provide handwriting specimens to me and another special
11 agent.

12 Q Mr. Conforti, during your interview with Mr.
13 Cleary, did he state whether or not he had received any
14 money or anything of value from Mr. Healy?

15 A Throughout the interview he stated that--repeatedly
16 stated that he was unaware that any of these loans were
17 irregular while he was making the loans. He also told me
18 he was never given anything by anyone connected with this
19 matter at all for making any of these loans.

20 Q Did he say whether or not he had been offered
21 anything?

22 A He did not.

23 MR. WEINBERG: No other questions, your Honor.

24 CROSS EXAMINATION

25 BY MR. MURPHY:

* * *

1 gwjl 189

2 Mr. French spoke to Mr. Healy about filling out the application.

3 A It refreshes my recollection, your Honor.

4 THE COURT: That is the answer, it does refresh
5 his recollection.6 Q Did Mr. Passarelli tell you during that interview
7 that Mr. French spoke to Mr. Healy concerning filling out the
8 application?

9 A Yes, he told me he called him on the telephone.

10 Q Was this interview that you had with Mr. French
11 that you testified to basically a question and answer interview?

12 A That's correct.

13 Q Did you ask Mr. French whether he had spoken to
14 Mr. Healy?

15 A I don't believe I did.

16 Q The facts concerning which you just testified,
17 this interview, was that ever set down into writing by you?

18 A You mean--

19 Q Transcribed.

20 A Yes. My notes were transcribed by a stenographer.
21 That is what you have in your possession.

22 Q Did you ever show those notes to Mr. Passarelli?

23 A No, I did not.

24 Q He never read it?

25 A No, he did not.

1 gwjl 190

Conforti-cross

2 Q Therefore, he never signed it?

3 A No.

4 Q Do you recall whether Mr. Passarelli told you on
5 the interview of 3/10/76 whether he had bad credit at the
6 Barclay's Bank or whether he could not get any credit at the
7 Barclay's Bank?8 A The way he explained it to me was that if he had
9 gone to Barclay's Bank himself in order to obtain the loans
10 he would not have been able to receive these loans.11 Q But he did not mention that he had to go with Mr.
12 Healy, isn't that a fact?13 A No, but he said he could not get the loans without
14 Mr. Healy.15 Q He said he could not have gotten any credit from
16 Barclay's Bank, is that correct?17 A No, I didn't say that. I said that he could not
18 have gotten any of the loans from Barclays Bank if he had
19 gone to the bank himself.20 Q Do you have a background in accounting, Mr.
21 Conforti?

22 A Yes, I do.

23 Q If Mr. Passarelli was the sole stockholder of
24 Westchester Avenue Marina and all of his assets--

25 THE COURT: I am reasonably sure, even without

gwjl 191

Conforti-cross

1 objection, the way you are going, that that question is going
2 to be objected to and I am going to sustain it. So we can
3 save our time by your not asking it.
4

5 Q Mr. Passarelli did not tell you during that inter-
6 view that he knew as the applications were being made that they
7 were being doctored up at that time, did he?

8 A He told me at the end of the interview--I asked him
9 if any of the applications had been altered prior to their
10 submission to Barclay's Bank. He told me at that time that
11 in every case of the loans that we had discussed during that
12 interview Mr. Healy altered them in order to have them
13 passed on at the bank.

14 Q But he did not tell you when he discovered that,
15 did he?

16 A No, he did not.

17 MR. BERGER: No further questions.

18 MR. WEINBERG: No further questions, your Honor.

19 MR. MURPHY: Your Honor, might I ask about a
20 subject not covered on direct, which is involved with this
21 witness? It will be very short.

22 THE COURT: You may, but you are bound by the
23 rules of direct evidence. You may not cross examine him.
24 He is your witness. Mr. Weinberg will be able to cross
25 examine him on that basis.

X X X

USA
v.
Cleary, et al
76 Cr 986
Jan. 13, 1977
Judge Carter

gwjl 1

* * *

C A R M I N E L I B E R A T O R E, called as a witness,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WEINBERG:

Q Mr. Liberatore, let me ask you to please keep your voice up so all members of the jury can hear you.

Mr. Liberatore, where are you employed?

A Ewen & Parker Corporation.

Q And what kind of work do you do for that corporation?

A I install and maintain automatic developing machines, x-ray developing machines.

Q Mr. Liberatore, do you know Mr. Gustavo Passarelli?

A Yes, I do.

Q And for how many years have you known him?

A About eight years.

Q Mr. Liberatore, I show you what is in evidence as Government's Exhibit 4, which is a financial statement of the Barclays Bank, which has the name Carmine Liberatore, and I show you Government's Exhibit 5 in evidence, which is another financial statement from Barclays Bank in the name Carmine Liberatore.

Mr. Liberatore, I ask whether or not any of the handwriting on Government's Exhibits 4 and 5 is your

1 gwjl 2
2 handwriting?

3 MR. BERGER: May it please the Court, I don't
4 wish to interrupt, but although the witness has not been
5 asked whether Mr. Passarelli is in the courtroom, we will
6 concede identification.

7 THE COURT: All right.

8 Q Mr. Liberatore, is any of the handwriting on
9 Government's Exhibits 4 and 5 yours?

10 A No.

11 Q Please look at the back of Government's
12 Exhibits 4 and 5 and is any of that writing yours?

13 A No.

14 Q Prior to your being shown these documents by
15 an FBI agent or another official from the government, had
16 you ever seen those documents before?

17 A No.

18 Q Mr. Liberatore, I show you Government's Exhibit
19 6 in evidence, which is a Barclays Bank of New York check
20 for \$5,000, pay to the order of 8626 Realty Corporation,
21 and I ask you whether or not prior to possibly being shown
22 that document by an FBI agent or another official of the
23 government, whether you had ever seen that check?

24 A No.

25 Q And I show you Government's Exhibit 7 in

1 gwjl 3

2 evidence, which is a note from the Barclays Bank which
3 contains a signature purporting to be that of yourself.

4 Is that signature your signature?

5 A No.

6 Q Is any of the handwriting on that note yours.

7 A No.

8 Q Prior to being shown that note by an FBI agent
9 or government official, had you ever seen that note?

10 A No.

11 Q Mr. Liberatore, what is your address?

12 A 157 School Street, Yonkers, New York.

13 Q You do not live--withdrawn.

14 In the fall of 1975, did you live at 1 Westchester
15 Avenue, Port Chester, New York?

16 A No.

17 Q In the fall of 1975, did you live at 356
18 North Regent Street, Port Chester, New York?

19 A No.

20 Q In the fall of 1975, did you own 200 shares of
21 AT&T common stock?

22 A No.

23 Q In the fall of 1975, did you have a life insurance
24 policy with a face value of \$100,000?

25 A No.

1 gwjl 4

Liberatore-direct

2 Q In 1974, did you have an income of \$25,000?

3 A No.

4 Q Did you have an income of \$25,000 in 1975?

5 A Possibly in '75.

6 Q Possibly in '75?

7 A That would be my last year's statement.

8 Q Your last year's tax return, yes, the year 1975?

9 A Yes, I did.

10 Q Mr. Liberatore, have you ever been an officer

11 of 8626 Realty Corporation?

12 A No.

13 Q And you therefore were not an officer of 8626

14 Realty Corporation in the fall of 1975.

15 A No.

16 Q Did there come a time when you were asked by
17 anybody to become an officer of 8625 Realty Corporation?

18 A Yes.

19 Q And do you recall when that conversation took
20 place?

21 A No, I don't.

22 Q Do you have any idea?

23 A A couple of years ago.

24 Q And who was present at that conversation?

25 A I don't remember.

* * *

* * *

(403)

1 gwbr 22

Savoca-direct

2 T H O M A S S A V O C A, called as a witness
3 on behalf of the government, having been first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WEINBERG:

7 Q Mr. Savoca, where are you employed?

8 A Barclay's Bank of New York.

9 Q How long have you been employed there?

10 A About 18 years.

11 Q Please keep your voice up.

12 A About 18 years.

13 Q Mr. Savoca, in 1973, what department of
14 Barclay's Bank did you work with?

15 A Installment loan department.

16 Q And do you still work in that department now?

17 A Yes.

18 Q And what is your major responsibility now at
19 Barclay's Bank?

20 A Well, I am second in charge of the entire
21 operation of the department.

22 Q Of the installment loan department?

23 A That is correct.

24 Q Did you have that position in 1973 also?

25 A Yes, I did.

1 gwbr 23

Savoca-direct

2 Q Are you familiar with the term "floor planning"?

3 A Yes, I am.

4 THE COURT: With the term what?

5 MR. WEINBERG: Floor planning. I had never
6 heard of it either.

7 THE COURT: F-l-o-o-r?

8 MR. WEINBERG: I believe so.

9 Q Mr. Savoca, would you please explain what the
10 term "floor planning" means to the jury?

11 A Well, it is basically a pre-arranged credit line
12 to a business where the bank gives a certain amount of credit
13 to a company or an individual which allows them to buy
14 merchandise, namely, automobiles or white goods or what-
15 ever, and this merchandise -- this line is given to them
16 for the entire year and they are able to buy their vehicles
17 and as they purchase a vehicle the bank gives them the
18 money for it and as they sell the vehicle or the white
19 goods or whatever, they pay off whatever is due to
20 the bank and the company retains the profit.

21 Q Under a floor planning agreement, is the
22 borrower obligated when he sells a particular car to pay
23 the bank immediately the proceeds from the sale of that
24 car --

25 A Yes.

1 gwbr 24

Savoca-direct

2 Q -- in accordance with the loan agreement?

3 A Yes.

4 Q Mr. Savoca, do you know Gustavo Passarelli?

5 A Yes, I do.

6 Q Do you see him in the courtroom?

7 MR. BERGER: Identification conceded.

8 Q Mr. Savoca, did you have a conversation with
9 Mr. Passarelli concerning instructions to terminate Mr.
10 Passarelli's floor planning arrangement that he had with
11 Barclay's Bank?

12 A Yes.

13 Q Do you recall approximately when that con-
14 versation took place?

15 A Probably the early part of 1973.

16 Q And do you recall who was present?

17 A It was a telephone conversation.

18 Q And what did you say to Mr. Passarelli?

19 A Well, it was indicated to him that it was
20 necessary for us to curtail our floor plan line with him.

21 Q Did the bank then begin to curtail the floor
22 planning arrangement that it had with Mr. Passarelli?

23 A The bank requested that -- the bank indicated
24 to him that we would no longer do any business and requested
25 that as he sold his vehicles we would be required to be

1 gwbr 25

Savoca-direct

2 paid in full on each particular vehicle.

3 Q Are you familiar with the term "out of trust"?

4 A Yes.

5 Q Would you explain what the term "out of trust"
6 means?

7 A Well, these vehicles were floor checked on a
8 monthly basis.

9 Q What do you mean by floor checked?

10 A As long as we are giving the money for the
11 purchase of these particular vehicles, we do a monthly floor
12 check, which assures the fact that the merchandise which
13 is being purchased is maintained on the premises of the
14 company.

15 Q In other words, you go to the borrower's
16 premises and check to see that the cars are still there?

17 A That is correct.

18 Q Did there come a time when you found out that
19 Mr. Passarelli was out of trust?

20 A Yes.

21 Q And when was that?

22 A In approximately March of 1973.

23 Q And what did it mean that Mr. Passarelli was out
24 of trust?

25 A It meant that the floor checker who went to

1 gwbr 26

Savoca-direct

2 sight the vehicles on the premises found that some of the
3 vehicles were not located there, that we could not locate
4 them.

5 Q Does Mr. Passarelli now have a floor planning
6 arrangement with Barclay's Bank?

7 A No, sir.

8 MR. WEINBERG: No other questions, your Honor.

9 CROSS EXAMINATION

10 BY MR. MURPHY:

11 Q Mr. Savoca, you have been with Barclay's Bank
12 for 18 years?

13 A Correct.

14 Q How long have been in the installment loan
15 department?

16 A 18 years.

17 Q And are you at the main office or what branch
18 are you?

19 A I was originally at the regional head office which
20 was formerly First Westchester National Bank prior to
21 the merger. Then when we merged with Barclay's Bank of
22 New York we were transferred to the Larchmont office,
23 where we are now.

24 Q So you were actually with First Westchester
25 for a period of time and then went over with the

* * *

* * *

[410]

1 gwbr 29

Savoca-cross

2 file, to make sure the application is filed, the signed
3 note is there and whatever papers that go along with it.

4 Q Who does the credit check -- yourself or what?

5 A No, we have individual clerks who do that.

6 Q Is that, as you have laid it out, the procedure
7 followed at Barclay's Bank for installment loans?

8 A Yes, sir.

9 MR.MURPHY: Thank you.

10 MR. BERGER: May I have a moment, your Honor?

11 (Pause.)

12 CROSS EXAMINATION

13 BY MR. BERGER:

14 Q Mr. Savoca, my name is Mr. Berger. I represent
15 Mr. Passarelli.

16 How long do you know Mr. Passarelli?

17 A I met him when we started doing business with
18 him back in 1972.

19 Q And this floor planning that we are speaking
20 of at Barclay's Bank, what was the name of Mr. Passarelli's
21 company?

22 A Westchester Recovery.

23 Q That is the name of the company for which the
24 floor planning was being done?

25 A Yes, sir.

* * *

~~*~~ ~~*~~ ~~*~~

[413]

1 gwbr 32

Savoca-cross

2 A I don't remember the exact date it happened.

3 It was just during the general course of business that
4 he was interested in doing this, and I indicated that
5 I would take it up before the individuals of the com-
6 mittee, and as far as I recall I got back to him and
7 indicated that the bank wasn't interested in doing that.

8 Q As a matter of fact, the report came back
9 that they wanted to discontinue all of his floor planning,
10 did it not?

11 A That was after that.

12 Q When was it that the bank decided to discon-
13 tinue all of Westchester Recovery Agency's floor planning?

14 A Well, I believe it came at the time when --
15 approximately the latterpart of December of '73 when
16 we noticed that we had vehicles which were not on the
17 premises, and at that point we -- I believe I wrote a let-
18 ter to Mr. Passarelli making demand for the balance of the
19 line.

20 Q How many vehicles did Mr. Passarelli have on
21 the premises?

22 A About 10.

23 Q How many vehicles were missing?

24 A Five.

25 Q Were they sold?

1 gwbr 33

Savoca-cross

2 A No.

3 Q Mr. Passarelli did not sell a car and
4 fail to pay the bank, is that correct, in 1973?

5 That was not the reason for pulling the floor plan, was it?

6 A I am not following that question.

7 Q When you said that he was out of trust, you
8 did not mean that he had sold the car without paying
9 you, is that correct?

10 A I guess that could be correct.

11 Q What you meant was that you didn't know where the
12 location of the cars was, is that correct?

13 A We could not determine the location of the
14 vehicles, that is correct.

15 Q But they had not been sold?

16 A That I don't know.

17 Q As a matter of fact, it turned out that one of
18 the cars was damaged and was being repaired, is that cor-
19 rect?

20 A We were not able to determine that.

21 Q Isn't it a matter of fact you received the
22 insurance money on it?

23 A I don't recall that.

24 Q What date -- was this in February that you said
25 Mr. Passarelli was out of trust?

* * *

* * *
Savoca-cross

[417]

1 gwbr 36

2 Q On January 9, 1974, you demanded that Mr.
3 Passarelli pay off all the loans, is that correct?

4 A Yes.

5 THE COURT: That date was in 1974?
6 I thought it was '73?

7 THE WITNESS: It was January, '74.

8 Q And that meant pay them off whether or not he
9 sold any of the cars, is that correct?

10 A Correct.

11 Q He could have a lot full of inventory and whether
12 he sold one car or not your bank wanted the money back?

13 THE COURT: Mr. Berger, please.

14 Q The bank wanted the money regardless of whether
15 the inventory was sold or not.

16 THE COURT: Come.

17 MR. BERGER: If your Honor please --

18 THE COURT: Mr. Savoca's statement as to the
19 agreement is clear. He indicated that they had reached
20 the conclusion, after having reached whatever agreement
21 they had with Mr. Passarelli, that he had not kept up
22 to the terms of the agreement because the cars or the
23 merchandise was not on the premises, they didn't know where
24 they were, and therefore, as I understand him, they were
25 terminating the agreement and demanded that he pay up.

1 gwbr 37

Savoca-cross

2 Isn't that the essence?

3 THE WITNESS: Yes.

4 Q How much money did Gustavo Passarelli
5 or Westchester Recovery Agency owe the bank on the moneys
6 due on the demand made January 9, 1974?

7 A Nothing.

8 Q He paid it, didn't he?

9 A That is right.

10 Q He didn't have the money to give it to you
11 immediately, did he?

12 A No, sir.

13 Q So he went ahead and mortgaged his property,
14 right?

15 MR. WEINBERG: Objection, your Honor.

16 THE COURT: Sustained.

17 MR. BERGER: No further questions.

18 THE COURT: Anything further?

19 MR. WEINBERG: No further questions, your
20 Honor.

21 THE COURT: Thank you, Mr. Savoca.

22 (Witness excused.)

23 THE COURT: We will take our morning recess
24 for ten minutes.

25 (Recess.)

* * *

* * *

1 gwbr 74

2 ment counts, which charge the filing of false statements in
3 the loan applications for Mary Roccario, Carmine Liberatore,
4 Carl French and Thomas Powers, in each of those instances we
5 have testimony from Mr. Healy that he told Mr. Cleary
6 that these loan proceeds were not going to these individuals
7 but in fact they were going to Mr. Passarelli and to
8 protect Mr. Passarelli's property.

9 Your Honor, in addition to that, I think I can
10 certainly argue to the jury that all of the circumstances
11 in this case, the way Mr. Cleary conducted himself, as
12 the evidence shows, certainly shows knowledge on his part
13 that the bank applications were false. I certainly can
14 argue that at best from his point of view he deliberately
15 disregarded whether or not the statements were true, and
16 the Second Circuit, in numerous cases, has said that you
17 can premise criminal liability on a deliberate disregard
18 of the truth.

19 THE COURT: I will hear Mr. Berger.

20 MR. BERGER: If it please the Court, I will
21 address myself to Counts 2 through 8 of the indictment.

22 The first thing I would like to say is that the
23 failure to follow bank procedure, even if it were a fact,
24 is not necessarily illegal unless some penal statute
25 or the United States Code makes it illegal to fail to follow

1 gwbr 75

2 banking procedure. Today we bank by mail, we borrow
3 by mail.

4 THE COURT: Come, Mr. Berger.

5 MR. BERGER: So I feel that bank procedure
6 is not of the essence in this case.

7 THE COURT: Your client in those counts is
8 being charged with aiding and abetting Mr. Cleary to
9 misapply bank funds.

10 MR. BERGER: Correct.

11 THE COURT: The issue is not that he violated
12 technical procedures of the bank but the issue is that he
13 aided and abetted him to get him to exceed his authority
14 in the bank by getting loans from him that on his own
15 he wouldn't be authorized to give. That is the essence
16 of the charges against your client.

17 MR. BERGER: The reason I raise the issue is
18 this: If Counts 2 to 8 were to be dismissed as to Mr.
19 Cleary, they then must be dismissed as to Mr. Passarelli.

20 THE COURT: Of course. There can't be aiding
21 and abetting if there is nobody to aid and abet. So if
22 Mr. Cleary is out as a principal, of course I agree with
23 that.

24 MR. BERGER: I am addressing myself to those
25 things which might give my client knowledge of misapplication

1 gwbr 76

2 by Mr. Cleary with an intent to injure and defraud, because
3 if my client does not have knowledge of the actions of
4 Mr. Cleary, then, even if Mr. Cleary were guilty, my
5 client would not be guilty of aiding and abetting.

6 THE COURT: Not on my theory. On my theory, the
7 business of your client is pretty clear. The evidence
8 is clear enough your client was utilizing Mr. Cleary to
9 attempt to get moneys from the bank that Mr. Cleary
10 wasn't authorized to give him and he wasn't entitled to
11 receive. He aided and abetted. The way the indictment
12 is framed, if Mr. Cleary is out, he is out. He certainly
13 participated in an effort to get funds he wasn't authorized
14 to receive and Mr. Cleary wasn't authorized to give them.

15 The evidence is clear enough he knew that.

16 MR. BERGER: With regard to Count 2, Mary
17 Roccario, there is no evidence that on September 22nd.
18 Mr. Passarelli had any idea of going back for one more dime
19 under any name. So then why would Count 2 fall within that
20 definition of what my client is being accused of? There
21 was no such evidence.

22 THE COURT: Maybe you are right about that.
23 You may have a point on Count 2, but that doesn't help -
24 sit down, Mr. Weinberg. Don't get anxious.

25 MR. WEINBERG: I am sorry.

1 gwbr 77

2 THE COURT: That doesn't help you. You may
3 have a point on Count 2. Even if Count 2 is thrown out,
4 the rest would remain provided Mr. Cleary stays in.

5 MR. BERGER: If I can get the count thrown out
6 regardless of the fact the other counts are not thrown
7 out it is to my benefit, and I feel the count should be
8 thrown out because there was no evidence on that.

9 THE COURT: All right. Don't oversell me.

10 MR. BERGER: I am not going to.

11 THE COURT: You may convince me to the con-
12 trary.

13 MR. BERGER: I haven't reviewed to see at what
14 point of time Mr. Healy and Mr. Passarelli, from the
15 evidence coming from Mr. Healy, reached an agreement whereby
16 they were going to continue to do \$5,000 loans.

17 THE COURT: Now we are on the conspiracy?

18 MR. BERGER: No. The conspiracy count I am
19 not going to address myself to.

20 If there came a point, whether with criminal
21 intent or not criminal intent, that Mr. Passarelli and
22 Mr. Healy decided that they will continue -- that this was
23 their plan of operation, this was their intent, to continue
24 to go back to the Barclay's Bank for \$5,000 loans, at one
25 point of time, when they have had that meeting of mind,

1 gwbr 78

2 when it is shown that this is their intent, that they
3 want to get Mr. Cleary to go beyond his loan capacity,
4 then of course that is the time when my argument on Count 2
5 ends, somewhere along the line. That's in the evidence.

6 I don't recall where that is. That is some-
7 where in the evidence.

8 In addition to that, the evidence coming from the
9 only government witness on the point, Mr. Healy, stated he
10 outright conned Mr. Cleary, outright conned him. He didn't
11 pay him anythihng, he went ahead and just faked him out.

12 THE COURT: All right. That doesn't help
13 Mr. Passarelli.

14 MR. BERGER: If Mr. Cleary had been faked
15 out and therefore did not have an intent to commit the
16 crime, if he was induced step by step, relying upon Mr. Healy
17 and relying upon the adequacy of the documents he was ob-
18 taining and relying upon representations made to him, then
19 Mr. Cleary is not guilty, and if Mr. Cleary is not guilty
20 then of course we can have no aiding and abetting again.

21 Now, in addition to that, the indictment has a
22 double-edged sword. On one hand it is saying that Mr. Cleary
23 was misapplying funds, that he was working with Mr. Healy,
24 and then we go to another count that says Mr. Healy and
25 Mr. Passarelli were falsifying documents in order to

1 gwbr 79

2 influence Mr. Cleary. If they had Mr. Cleary in the bag,
3 then why did they have to falsify these documents to
4 influence him?

5 THE COURT: You know, Mr. Berger, that indict-
6 ment doesn't in that regard have to have a consistency
7 in terms of the counts.

8 MR. BERGER: True, your Honor.

9 THE COURT: Also, you and I know we often argue
10 inconsistent theories.

11 MR. BERGER: Correct, but the witness,
12 Mr. Healy, testified that documents were changed in order to
13 get through Mr. Cleary.

14 Now, if he had Mr. Cleary in the bag, why is he
15 changing documents and why would my client believe that
16 Mr. Cleary was misapplying funds with intent to injure
17 and defraud the bank if my client, according to the testi-
18 mony of Mr. Healy, had to make up phony financial statements
19 to get through Mr. Cleary?

20 THE COURT: The problem with the argument so far,
21 what you are doing is you have made an argument that Mr.
22 Healy, to use your colorful language, faked out Mr. Cleary,
23 but that is not what the indictment charges. That is
24 your argument. You are using your argument to say
25 if that is so there is an inconsistency. I can't follow

1 gwbr 80

2 that.

3 MR. BERGER: What I am saying is that the
4 only evidence from Mr. Healy is that not only did he con
5 Mr. Cleary but that he and Mr. Passarelli falsified
6 documents in order to influence Mr. Cleary, in order to
7 mislead Mr. Cleary. That's the evidence I am talking
8 about.

9 Now, that is the only evidence. So under that
10 set of facts and the evidence from Mr. Healy, I would move
11 Counts 2 through 3 be dismissed. I will not address
12 myself to the other count.

13 THE COURT: Before we go to lunch, I would
14 like to hear from you on Count 2, or you can answer it any
15 way you want.

16 However, particularly as to Count 2.

17 As I heard Mrs. Roccario's testimony, she did give
18 authority to her daughter to make an application for her
19 and she also gave authority to her daughter to apply for
20 a loan to do something to her house and give money to her
21 husband in his business. As I recall, she didn't know how
22 much it was, what the loan was, but she had left matters
23 to her daughter. Therefore, I have some problem
24 with Count 2.

25 MR. WEINBERG: Your Honor, the government would

1 gwbr 81

2 submit that the fact -- this is assuming Mrs. Roccario's
3 testimony, that her daughter did ask her for permission,
4 that does not affect Count in the government's judgment.

5 According to Mr. Healy's testimony, he went into
6 the bank and he told Mr. Cleary that the proceeds of that
7 loan were going to Mr. Passarelli. Nobody thought -- let
8 me rephrase that, your Honor.

9 Nobody thought, among the three defendants,
10 from what the government's evidence showed, that that
11 money was going anywhere other than to Mr. Passarelli
12 and Mr. Passarelli could not himself have gone into
13 Barclay's Bank.

14 THE COURT: And the testimony is Mr. Passarelli
15 signed Mrs. Roccario's name, is that what the evidence is?

16 MR. WEINBERG: I believe Mr. Healy testified
17 that he thought Mr. Passarelli signed Mrs. Roccario's
18 name. The point is the fact that Janet Passarelli
19 asked her mother for permission to use her name doesn't in any
20 way negate the criminal responsibility of Mr. Passarelli
21 and Mr. Cleary and Mr. Healy if in fact that loan was
22 really going to Mr. Passarelli for Mr. Passarelli's
23 business. The daughter may have gotten the consent of
24 her mother to use the name. The point is the loan was
25 not going to Mrs. Roccario, the loan was in fact going

1 gwbr 82

2 to Mr. Passarelli.

3 Therefore, it is a misapplication of bank funds.

4 THE COURT: All right. I will --

5 MR. WEINBERG: May I?

6 THE COURT: Do you have something else?

7 MR. WEINBERG: From part of Mr. Berger's
8 argument -- I just wasn't sure and I want to make sure we are
9 in agreement-- that although Mr. Passarelli cannot be
10 guilty of aiding and abetting in Counts 2 through 8 unless
11 Mr. Cleary is also guilty, that is not the case with
12 Counts 9 through 12.

13 Mr. Passarelli could be guilty of aiding and
14 abetting in the submission of false applications even
15 if Mr. Cleary is not guilty.

16 MR. BERGER: I agree.

17 THE COURT: We will take our full hour for
18 lunch. We will resume at 2:15. I will give the matter
19 some thought.

20 MR. MURPHY: Your Honor, excuse me. Although
21 I don't want to belabor the obvious, I thought I ought to
22 mention it. The testimony is Mr. Cleary didn't get any money
23 out of this.

24 THE COURT: I know. That's what makes it one of
25 the most baffling episodes that I have come in contact

1 gwbr 83
2 with.

3 That is true. It is a very baffling episode
4 because of that.

5 There is no testimony that he received anything
6 from it. So it is very baffling.

7 (Luncheon recess.)
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* * *
Cleary-direct

[500]

1 gwlt 24

2 to people who had deposits with us or based on an idea -- if
3 it was a great idea we would go along with it, but I was
4 hit upon -- when I say hit upon, I mean really badgered by
5 a number of people with a parade to your desk of going over
6 and trying to sell items. I had one fellow who was a branch
7 depositor for a number of years who came in daily and would
8 sit at your desk and talk about nothing else but to show you a
9 new idea.

10 Q Did you also work on projects for Mr. Flanagan?

11 A Yes, sir, whenever directed.

12 Q What was your credit line for Barclay's at the time
13 you received this title of public relations manager and
14 assistant manager, public relations officer?

15 A 5,000 secured and it was 10 or 15 thousand --
16 5,000 unsecured, 10 or 15 thousand secured.

17 Q What is meant by 5,000 unsecured and 10 or 15
18 thousand secured, to your understanding?

19 A 5,000 unsecured means that it is within my judgment
20 to grant a loan for \$5,000 without any collateral security
21 and grant a loan for 10 or 15 thousand secured by collateral,
22 marketable securities, passbook, treasury bills, bonds, what-
23 ever is a marketable security.

24 THE COURT: Is it your testimony that you were
25 authorized to approve on your own with collateral security

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Cleary-direct

L [526]

1 gwlt 50

2 yourself about this loan for 8626 Realty Corporation?

3 A I believe so.

4 Q What did he say to you -- first of all, what date
5 was it, approximately?

6 A It was approximately October 22nd.

7 Q And where was it held?

8 A Barclay's Bank.

9 Q Who was present, if you recall?

10 A Myself and Mr. Healy.

11 Q During regular working hours?

12 A Correct.

13 Q What did he say to you about these documents, if
14 anything, in substance?15 A I believe the application was made for working
16 capital. I am not sure if Mr. Healy informed me of the
17 background of 8626 Realty Corporation at this time. The
18 application was made. He said there would be no problem on
19 collectibility of funds. I imagine --20 Q Not what you imagine. To the best of your
21 recollection, what happened?22 A To the best of my recollection, I would go by the
23 financial statement for the amount of loan involved, that
24 the signature as it appeared on the corporate resolution.

25 Q What did you say to him about the corporate

1 gwlit 51

Cleary-direct

2 resolution, if anything?

3 A I had to have the resolution executed in order to
4 see who signed for the corporation.

5 Q What is the meaning of a corporate resolution?

6 A Just so the bank can understand who is authorized
7 to borrow funds, enter into an agreement for a corporate
8 entity, attested to by corporate seal.

9 Q Was that your practice, to have the authority of
10 the individual making the loan on behalf of the corporation
11 attested to by a corporate resolution while you were at
12 Barclay's?

13 A Sometimes.

14 Q In the exercise of your discretion, did you deter-
15 mine to make this loan to 8626 Realty Corporation?

16 A Yes, sir.

17 Q Were the loan documents filed and reviewed in the
18 regular course by the bank, so far as you know?

19 A Yes.

20 Q I show you Government's Exhibits 9, 10, 11, 12
21 and 13 which I call the Westchester Avenue Marina loan docu-
22 ments.

23 Were those documents given to you by Mr. Healy in
24 the course of your duties at Barclay's Bank?

25 A Yes, sir.

* * *

* * *
Cleary-direct

[544A]

1 gw:mg 4

2 financial statement of Mr. Passarelli.

3 Q This Government's Exhibit 21, is that the
4 note that was executed for the loan?

5 A Right.

6 Q Now I show you Government's Exhibits 23, 24
7 and 25 and 26, which are the documents on the Power loan
8 and I ask you if you recognize those items?

9 A Yes, I do.

10 Q When did you receive them?

11 A I received Government's Exhibits 23 and 24 --
12 I received these through Mr. Healy approximately the
13 25th of November.

14 It is an installment loan application and a
15 note. I proceeded with a credit check for the applica-
16 tion. I proceeded to make Government's Exhibit 25 out,
17 a check for \$5000 payable to Thomas Powers.

18 I was informed by the bank to collect the
19 proceeds of the loan approximately the middle of December.
20 I went to Mr. Passarelli's place of business in Port
21 Chester and informed him that I needed complete payment
22 on all the loans that I granted through Mr. Healy.

23 One of the loans in question was Thomas
24 Powers, who I was informed worked for Mr. Passarelli.
25 And I gave him a security agreement, Government's Exhibit

1 gw:mg 5

Cleary-direct

2 26, which was to secure a boat that was to be used. The
3 boat was the reason for the loan.

4 That's it.

5 THE COURT: I don't understand your testimony
6 about the security. I am talking about the sequence.

7 MR. MURPHY: I had not asked-- I can set the
8 foundation for that.

9 THE COURT: I am talking about his testimony
10 here, Mr. Murphy. I want to understand the testimony.

11 What I didn't understand is: You indicated
12 that you went to Mr. Passarelli in December, and then
13 you made some reference to a security agreement.

14 Is that the date of the security agreement,
15 December, when you went to collect the loan?

16 I am trying to find out the sequence.

17 THE WITNESS: The loan was an unsecured loan
18 when I first made it. I was asked by the bank to fully
19 collateralize or receive full payment for the loans.

20 THE COURT: So that you got the security
21 agreement in December?

22 THE WITNESS: Correct.

23 THE COURT: All right.

24 O I show you Government's Exhibits 33 and 34,
25 the materials on the Hogan loan, and I ask you when you

* * *

* * *
Cleary-direct

[550]

1 gw:mg 10

2 had more than enough to warrant granting a loan for the
3 money needed for options.

4 My main contention was that I would grant a
5 loan that would be capable to stand on its own two feet.
6 I made the loan.

7 Q I show you the last loan in this series,
8 Westchester Avenue Used Cars, Government's Exhibits 27
9 and 28.

10 Do you recall having a conversation with Mr.
11 Healy about that loan?

12 A Yes, sir.

13 Q And when was that, roughly?

14 A Approximately December 15th.

15 Q And who was present?

16 A Mr. Healy and myself.

17 Q And what did he say to you and what did you
18 say to him, in words or substance?

19 A Mr. Healy said there was an entity by the name
20 of Westchester Avenue Used Cars.

21 Q An entity, did you say?

22 A Sir, that is my approximation of the conversa -
23 tion. This is to the best of my recollection at the time
24 of the loan.

25 He said working capital would be needed for

1 gw:mg 11

Cleary - direct

2 an upcoming auction for used cars. It would be a short
3 term note. It was my understanding at the time that I
4 received a financial statement for this entity, and I
5 granted the loan.

6 Q Do you recall receiving a financial statement
7 or what with respect to it?

8 A To the best of my recollection, I feel that
9 I received a financial statement for this entity, West-
10 chester Avenue Used Cars.

11 Q Do you know what happened to that financial
12 statement, if anything?

13 A No, sir.

14 Q Did you put it into your files at Barclays
15 Bank or not, do you recall?

16 A My usual procedure when I would receive
17 financial statements --

18 MR. WEINBERG: Objection, your Honor. If
19 he remembers or he does not.

20 THE COURT: First, do you remember? Do you have
21 a specific remembrance of what you did with it?

22 THE WITNESS: No, sir.

23 THE COURT: All right, I think not remembering,
24 you may now tell us what your usual procedure is.

25 Q What was your usual procedure with respect to

* * *

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Cleary-recross

[613]

gwrn 1

AFTERNOON SESSION

2:00 p.m.

(In open court; jury present.)

W I L L I A M H . C L E A R Y , resumed.

THE CLERK: Mr. Cleary, I remind you you are
still under oath.

MR. MURPHY: No further questions on redirect.

MR. BERGER: May it please the Court, some
questions came up during cross and I would like to ask
two or three questions.

THE COURT: All right.

RE CROSS EXAMINATION

BY MR. BERGER:

Q Mr. Cleary, did Carmine Liberatore make
application to you for a personal loan?

A I believe there was an application for Mr.
Liberatore.

Q Was that for a loan to Mr. Liberatore or a loan
to a corporation?

A For Mr. Liberatore.

Q Was that loan ever granted?

A No, sir.

Q Did Gus Passarelli ever make application to you
for a personal loan?

1 gwrn 2

Cleary-recross
Rabasca-direct

2 A No, sir.

3 MR. BERGER: No further questions.

4 MR. WEINBERG: Nothing else, your Honor.

5 THE COURT: All right, thank you, Mr. Cleary.

6 You may step down.

7 (Witness excused.)

8 THE COURT: Call your next witness.

9 MR. MURPHY: The defense rests, your Honor.

10 MR. BERGER: Julia Rabasca.

11 J U L I A R A B A S C A , called as a witness by the
12 defendant Passarelli, being first duly sworn,
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BERGER:

16 Q My name is Mr. Berger and I represent Mr.
17 Gus Passarelli. Do you know Mr. Passarelli?

18 A Yes, I do.

19 Q Do you see him in the courtroom today?

20 A Yes, I do.

21 Q Miss Rabasca, where are you employed?

22 A I am employed at the Rye office of Barclay's
23 Bank of New York.

24 Q how long have you been employed there?

25 A At the Rye office?

1 gwrn 3

Rabasca-direct

2 Q Yes.

3 A I have been at the Rye office since 1961.

4 Q And what position do you currently hold at the
5 Rye office?

6 A Assistant cashier and manager.

7 Q And how long have you held that position?

8 A I would say about eight years.

9 Q Do you know Gus Passarelli as a customer of
10 the bank?

11 A Yes, I do.

12 Q Did there come a time that you acted in the
13 capacity of his loan officer?

14 A Yes.

15 Q When did that occur?

16 A I think it was about 1972.

17 Q Did Mr. Passarelli have more than one corpora-
18 tion at the bank which dealt with you?

19 A Yes.

20 Q Now, from 1972 to 1973, did you on occasion
21 loan money to Mr. Passarelli and various of his corporations?

22 A Yes, I did.

23 Q Did you loan money to individuals for whom Mr.
24 Passarelli co-signed?

25 A Yes, I did.

gwrn 4

Rabasca-direct

[616]

1 THE COURT: I suppose we ought to make this
2 accurate. I do not assume she lent any money, she approved
3 loans of the bank's money.
4

5 Q Did you approve loans of the bank money to Mr.
6 Passarelli for various of his corporations?

7 A Yes, I did.

8 Q Did you approve loans of the bank's money for
9 various individuals for whom Mr. Passarelli signed?

10 A Yes, I did.

11 Q From 1972 to 1973, approximately how much money,
12 of the bank's money, did you authorize to be loaned to
13 Mr. Passarelli and various of his corporations?

14 A I am sorry. I didn't get the year.

15 Q 1971 to 1973 or 1972 to 1973.

16 THE COURT: Ask one or the other.

17 Q Do you recall whether you made any loans in 1971?

18 A I don't believe in '71, no.

19 Q Then from 1972 to 1973, approximately what
20 amount of money was loaned by the bank to Mr. Passarelli
21 and various of his corporations and individuals for whom he
22 co-signed that you know of?

23 A I don't have the exact figure.

24 Q Can you give us an approximation?

25 A You are giving me in one year?

gwrn 5

Rabasca-direct

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2

Q No, over a period of '72 and '73.

3

A '72 and '73?

4

Q Yes.

5

A I would say maybe 20, 25 thousand dollars.

6

Q And did that include monies that were loaned to

7

individuals for whom he co-signed?

8

A Yes.

9

Q Did any of those individuals for whom he co-

10

signed default in the repayment of their loans?

11

A Some of them did.

12

Q Did Mr. Passarelli repay all of the money he

13

borrowed, his corporations borrowed and the individuals

14

borrowed for whom he co-signed?

15

A Yes, over an extended period.

16

Q Were there times that Mr. Passarelli was

17

delinquent in the payment of his loans?

18

A Yes, there were a few times.

19

Q A few times. And how long a period of time

20

would he generally be delinquent for?

21

A Ten days to possibly -- ten to twenty days, I

22

would say.

23

Q As assistant cashier of the bank, are you

24

familiar with the bank's policy with regard to lending

25

limits placed upon certain officers of the bank?

1 gwrn 6

2 A Yes.

3 Q If an officer has a lending limit of \$5000,
4 does that mean that he cannot loan \$5000 each to various
5 corporations that might be owned by one stockholder?

6 A I am sorry. Would you repeat that again for me?

7 Q Yes. If a lending officer has a loan limit of
8 \$5000 per loan, is he restricted from loaning \$5000 to
9 various different corporations which happen to be owned by
10 one individual?

11 A No.

12 Q Does the Barclay's Bank have forms for financial
13 statements as well as loan applications?

14 A Yes, we do.

15 Q Are the two different?

16 A Yes.

17 Q Are there circumstances under which an individ-
18 ual or corporation can borrow money from the bank by
19 putting in a financial statement and an oral loan applica-
20 tion?

21 A The corporation would put -- would submit a
22 financial statement and an oral conversation could take
23 place with the officer.

24 Q In other words, loan applications or the request
25 to borrow money need not be in writing; is that correct?

1 gwrn 7

Rabasca-direct

2 A That's right, if you are talking about commer-
3 cial loans, yes.

4 Q On a time loan, however, what would be the
5 procedure of the bank?

6 A To a corporation?

7 Q Or an individual.

8 A We would -- if it is an individual, we would
9 have him fill out a personal financial statement.

10 Q And what about an application?

11 A An application as such we use when we give
12 installment loans.

13 Q Therefore, on an installment loan there would be
14 a written application in addition to a financial statement?

15 A No. We would take the installment loan appli-
16 cation in lieu of the financial statement.

17 Q In other words, the application would be a
18 combination of a financial statement and application in the
19 case of installment loans?

20 A To a degree. A financial statement goes into
21 more detail as to the individual's assets and liabilities.

22 Q I show you what has been marked in evidence as
23 Government's Exhibit 5, a financial statement, and ask you
24 whether that is an application or request for a loan.

25 A No, this is a personal financial statement.

1 gwrn 8

Rabasca-direct

2 Q And the application would be probably made
3 orally; is that correct?

4 A If an individual came in for a loan, yes.

5 Q Does Government's Exhibit 5 indicate that 3626
6 Realty Corporation has applied for a loan?

7 A Looking at this particular one?

8 Q Yes.

9 A No.

10 Q Did there come a time in 1973 that Mr.
11 Passarelli asked for an increase in his floor planning
12 limits at the Bank?

13 A I do not handle the floor planning. I set up
14 an appointment with Mr. Passarelli and whoever is in charge
15 of the floor planning.

16 Q Had Mr. Passarelli asked you to set up an
17 appointment so he could increase his floor planning?

18 A I don't know if that was the reason, but I do
19 know an appointment was set up.

20 Q An appointment was set up for what?

21 A For Mr. Passarelli to set up with the officers
22 who handle that.

23 Q Do you know why he wanted to meet with them?

24 A I don't recall.

25 MR. WEINBERG: Objection, your Honor.

* * *

1 gwrn 39

2 I allowed that question. Get back to that question and move
3 on to something else.

4 Q Prior to September of 1975, had 8626 Realty
5 Corporation invested additional money in the property for
6 improvements?

7 A Yes.

8 Q Approximately how much?

9 A I have to bring it up Westchester Avenue Marina.

10 Q How much did 8626 Realty Corporation invest in
11 the property?

12 A Over \$100,000.

13 Q Do you know of a corporation, Westchester
14 Avenue Marine, Inc.?

15 A Yes.

16 Q Do you know when that corporation was organized?

17 A In '75.

18 Q From the date of its organization until today,
19 who owned the stock of that corporation?

20 A I do.

21 Q What is the business of Westchester Avenue
22 Marina?

23 A Sailboat, engine, accessories, repair, water
24 storage, dry storage, winter and summer storage.

25 Q Do you know a corporation by the name of

gwrn 40

Gustavo Passarelli-direct 652

Westchester Avenue Used Cars, Inc.?

A Yes.

Q Do you know when that corporation was formed?

A In '75.

Q Do you know who owned the stock of that corporation?

A I do.

Q Who is Mary Roccario?

A My mother-in-law.

Q Do you know a man by the name of Jerome Healy?

A Yes, I do.

Q When did you meet Jerome Healy?

A In 1973.

Q Under what circumstances did you meet Mr. Jerome Healy?

A I sold him a car.

Q What kind of a car did you sell him?

A I sold him a 1973 Duster Plymouth and I sold a neighbor an Oldsmobile.

Q Did Mr. Healy pay for his car?

A Yes, he did.

Q At the time that you sold him the car, did you and Mr. Healy have any discussions or conversations?

A We come out friends.

1 gwrm 41

Gustavo Passarelli-direct

2 MR. WEINBERG: Objection, your Honor.

3 THE COURT: The objection is sustained.

4 Q At the time that you sold him the car, did Mr.
5 Healy tell you what his profession was?

6 A A lawyer and also consultant for big buildings.

7 Q You can't be heard, Mr. Passarelli, back here.

8 A As a lawyer, also consulting as a developer of
9 shopping centers. He represented a big company. His
10 brother-in-law was big. Any time I needed any help he said
11 call him up. He said, "I have an answering service every
12 day."

13 Q After Mr. Healy bought the car from you, did
14 you see him again?

15 A I saw him --- like I said, his neighbor bought
16 a car, and his wife and Mr. Healy and him brought the car
17 back for air conditioning one time and little things and
18 I used to lend a car for driving. After that I did not see
19 Mr. Healy for quite a while.

20 Q Did there come a time in 1975 that you met Mr.
21 Healy again?

22 A Yes, in June, 1975.

23 Q And where was that?

24 A 1 Westchester Avenue, Port Chester.

25 Q And why did he come to see you?

gwrn 42

Gustavo Passarelli-direct

1
2 A He come in with an old car, a 1968 station wagon
3 Chrysler. He left it there.

4 Q Did he spend some time in your office?

5 A Yes. We come out friends. We talk.

6 Q In July of 1975, did he spend some time in your
7 office?

8 A Yes.

9 Q While he was in your office do you know if he
10 overheard a telephone conversation with you and anyone?

11 A Yes.

12 MR. WEINBERG: Objection, your Honor.

13 THE COURT: The objection is sustained.

14 A I talk to somebody --

15 THE COURT: Mr. Passarelli --

16 THE WITNESS: I am sorry. I did not understand
17 you, your Honor.

18 Q While he was in the office did you have a
19 telephone conversation with anyone?

20 A Yes.

21 Q After that telephone conversation, did you have
22 a conversation with Mr. Healy?

23 A Yes.

24 THE COURT: When is this now?

25 MR. BERGER: July, 1975.

1 gwrn 43

Gustavo Passarelli-direct

2 A He said to me, "What's the matter? I hear you
3 talking to somebody."

4 I said, "Yes, I talk to Mr. Truman in New York.
5 He is the agent financing my property here."

6 He said, "You got problems?"

7 I said, "Yes, I do."

8 He overheard what I was talking to this guy in
9 New York City by the name Mr. Truman.

10 Q The following day, did you receive a phone call
11 from Mr. Healy?

12 A Yes.

13 Q What was the discussion you had with him?

14 A He asked me if I have time. I said a little bit.
15 He said, "Can I come down and talk to you?"

16 I said, "Not too much. I am busy now."

17 He said, "Let me come down. I have good news
18 for you."

19 He come down and he asked me to lend him a car.
20 I said, "Why not," and I did lend him a car.

21 He said, "I talk to some people. What do you
22 need?"

23 I said, "I need \$21,000, 15 for default, 6000
24 lawyers fees and this and that."

25 So all total it was \$21,000. He said, "If I

1 gwrn 44

Gustavo Passarelli-direct

2 get you \$35,000 you get by for a few months?"

3 I said, "I will get by until the end of
4 October."

5 He said, "At the end of October I will try to
6 get you a big mortgage."

7 I said, "That is what I need, a long-term
8 mortgage, \$125,000."

9 Q Did Mr. Healy that day or the following day
10 bring someone to the marina?

11 A Yes.

12 Q Who did he bring -- were you introduced to the
13 individual?

14 A I was introduced to this gentleman, tall gentle-
15 man, good look gentleman, somebody named Mr. Walter Steel.
16 We were talking. He introduced me. I excused myself. I
17 said, "If you need me for anything, you call me. I will be
18 around the yard."

19 I saw him leaving. I said, "You need me?"

20 He said, "No, not at all."

21 Mr. Healy said, "Gus, I will call you right
22 back."

23 They were both in the same car.

24 This was maybe 10:30 in the morning, and Mr.
25 Healy he called me from New Rochelle. There is a restaurant

gwrn 45

Gustavo Passarelli-direct

1 on North Avenue. It is underneath a building. I don't know
2 the name of the restaurant. There is a restaurant and bar
3 there. He called me from there and he asked if I could meet
4 him there. I said, "Fine, I will come right down."

5
6 Q Did you meet Mr. Healy?

7 A Yes, I did.

8 Q Did you have a conversation with him?

9 A Yes, I did.

10 Q What did he say to you and what did you say to
11 him?

12 A He told me the gentleman that was there this
13 morning was a very good friend of his for over ten years,
14 he got lots of money, he does a lot of investment, he would
15 put a loan to you for \$35,000. He explained to me, he will
16 take \$3000 off the top, Mr. Steel, but all told, with off
17 the top and the front, it was going to come fifteen percent
18 a year plus what Mr. Healy was charging me for his fee.

19 I said, "That is very fair. I accept."

20 I went back and next day Mr. Healy came back
21 again in my office. We started discussing it. He said,
22 "I can get you the money right away."

23 I said, "Fine."

24 "Do you want me to talk to Mr. Peckam?"

25 "No, because I got Mr. Steel."

gwrn 46

Gustavo Passarelli-direct [658]

1
2 Another gentleman who was vice president with
3 Mr. Peckam I talk to him all the time. I said, "Let me
4 talk to them and tell them the good news."

5 Q In August did you have a discussion with Mr.
6 Healy regarding the Steel mortgage?

7 A Yes. He come in to me and he want the detail
8 for the property for search, for placing the second mortgage.
9 I give all the detail to Mr. Healy. I give him the deed
10 for the search. He said, "I will do this quickly."

11 I said -- he said, "Don't worry about it. I
12 will be back to you in a couple of days."

13 Q A few days later did Mr. Healy return to you?

14 A Yes. He said, "I did draw the mortgage."

15 I said, "What good is it? They are foreclosing.
16 When is this money coming?"

17 He said, "Patience. Do you need a few thousand
18 dollars?"

19 I said, "Sure."

20 He said, "Can you get by?"

21 I said, "Anything I get I will get by."

22 He said to me, "Listen, I have to have this
23 mortgage signed otherwise I can't get any money."

24 I said, "I won't sign the mortgage until I get
25 money first."

1 gwrn 47

2 He said, "First we should go to Mr. Steel's
3 office because he want to meet you."

4 "Give me the money and I give it to them and I
5 sign the second mortgage."

6 It looked like he was nasty. It looked like
7 he was doing me a favor for signing the mortgage.

8 He said, "How much money do you need for now?"

9 I said, "At least \$15,000."

10 He come in and say, "I am going to borrow some
11 money."

12 I said, "Why are you going to borrow money if
13 you have \$32,000 from Mr. Steel?"

14 He said, "One of my client end up in jail and
15 he put up a \$50,000 bond, a cash bond, and I used Mr.
16 Steel's money. I worry about it because Mr. Steel doesn't
17 know nothing about it."

18 I said, "That's good. Why should I be the
19 unlucky guy? Why should I be the guy signing you the
20 second mortgage and me out of luck?"

21 He said he was going to make me very happy very
22 quick, he would borrow some money.

23 Q Did Mr. Healy give you any money before you gave
24 him the names of individuals that would borrow money at the
25 Barclay's Bank? Did he give you any money outside of that?

1 gwrn 48

Gustavo Passarelli-direct

2 A Yes, he did.

3 Q How much did he give you?

4 A \$10,800.

5 Q Did there come a time that Mr. Healy suggested
6 that you apply for a loan at the Barclay's Bank?

7 A Yes.

8 Q And what did you say to him and what did he say
9 to you?

10 A I said, "Barclay's Bank, I don't want no part
11 of the Barclay's Bank at all. I just finished paying my
12 last payment in August and I never want to borrow money
13 again from Barclay's Bank" I never thought I was a bad
14 credit. I never was denied from Barclay's Bank for any loan.

15 Q Did there come a time that there was a discus-
16 sion between you and Mr. Healy with regard to somebody other
17 than yourself going into Barclay's Bank and making a loan
18 and then loaning you the money?

19 A Yes. From the \$10,800 he took back 800. So
20 it was \$10,000. In the meantime we need \$15,000. He said,
21 "How about some relative of yours? You don't have to be
22 bothered."

23 I said, "My mother-in-law banks at Barclay's
24 Bank. She has A No. 1 credit at Barclay's Bank."

25 Q Did you have any discussion with your wife

1 gwrn 49

Gustavo Passarelli-direct

2 regarding her mother borrowing money from the Barclay's
3 Bank?

4 A Yes, I did talk to my wife. I told my wife but
5 I did not tell my wife my attorney blew my \$32,000.

6 Q Do you know whether your mother-in-law, Mary
7 Roccario, signed the loan application made with Barclay's
8 Bank?

9 A She can't. She was out of town. I believe she
10 was in the Catskills.

11 Q Who signed it?

12 A My wife did.

13 Q Did you deliver a blank financial statement to
14 your wife?

15 A To the beauty shop.

16 Q Did you receive those documents back signed by
17 your wife in blank?

18 A Yes, I did.

19 Q What did you do with them?

20 A I deliver to the particular bar in New Rochelle,
21 the same bar and restaurant.

22 Q Did Mr. Healy ask you for any information to
23 fill in the application?

24 A I said, "I don't know anything about my mother-
25 in-law. Call my wife."

1 gwrn 50

2 Q Did he call your wife?

3 A I put my wife on the phone and Mr. Healy talked
4 to her.

5 Q Did you give him any of the information that is
6 on the application?

7 A No, I didn't.

8 Q Did there come a time when Mr. Healy gave you
9 a check for \$5000 payable to Mary Roccario?

10 A Yes, he did.

11 Q Did Mary Roccario sign the back of that check?

12 A No.

13 Q Who did?

14 A My wife.

15 Q Who received the proceeds of that check?

16 A I don't understand.

17 Q Who received the money from the check?

18 A I did.

19 Q Did you sign the name Mary Roccario to any of
20 those applications or forms?

21 A No, I didn't.

22 Q Did you ever see the application when it was
23 completely filled out?

24 A No, I didn't.

25 Q Prior to its submission to the bank, that is?

Gustavo Passarelli-direct

1 gwrn 51

2 A Beg pardon?

3 Q Did you ever see the application fully filled
4 out prior to the time it was submitted to the bank?

5 A No.

6 Q Did there come a time in October of 1975 that
7 you needed additional money?

8 A Yes.

9 Q Why did you need the additional money?

10 A My foreclosure on the property.

11 Q What did you need the money for?

12 A Postpone it.

13 Q What?

14 A Postpone my foreclosure.

15 Q Did you have a conversation with Mr. Healy with
16 regard to that matter?

17 A Yes.

18 Q Did you discuss 8626 Realty Corporation with Mr.
19 Healy?

20 A Yes.

21 Q When did this conversation take place between
22 you and Mr. Healy?

23 A I do not remember the date. In my office.

24 Q Was it before you obtained a loan for 8626
25 Realty Corporation?

1 gwrn 52

Gustavo Passarelli-direct

2 A Yes.

3 Q Where did the conversation take place?

4 THE COURT: He said in his office.

5 Q What did you say to Mr. Healy and what did Mr.
6 Healy say to you?

7 A Mr. Healy said to me --

8 Q Can't hear you.

9 A Mr. Healy said to me, "Gus, who own that
10 property, the marina or you got another corporation?"

11 I said, "The marina has nothing to do with the
12 property. It is a different corporation."

13 "What is the name of the corporation?"

14 "8626."

15 He said to me, "Who is the owner of the corpor-
16 ation."

17 I said, when I form the corporation, as far as
18 I know, "My wife was present, three attorneys was present,
19 there was Carmine Liberatore was vice president."

20 He said, "Good, because let's use 8626."

21 He said, "Don't worry about it. I will take
22 care of this loan."

23 Q Prior to the time that 8626 Realty Corporation
24 applied for a loan, did you have a conversation with Mr.
25 Healy with regard to seeking money elsewhere outside of Mr.

1 gwrm 53

2 Steel, looking for money from someone other than Mr. Steel?

3 A He was looking other place, too, I guess.

4 Q Did you have a discussion with regard to your
5 going elsewhere?

6 A Yes.

7 Q And what did Mr. Healy say to you about that,
8 if anything?

9 A There was a guy in White Plains offer me
10 \$150,000 for the complete -- pay off everything. And Mr.
11 Healy stopped me. He said, "Can't."

12 "I got to protect Mr. Walter Steel's \$35,000.
13 It is \$32,000 I took," he said.

14 I said, "I will get you out of this mess cheaper
15 than the people in White Plains. The people in White Plains
16 was a little too high for front, but I don't care because
17 I just want to stay and I want to continue to do business."

18 Mr. Healy said, "Give me the opportunity. Don't
19 ruin my friendship with Walter Steel. I will help you
20 raise the fund because I made a mistake and I got to get
21 out of this mess."

22 Q Did he ask you anything about a mortgage at that
23 time, a second mortgage for Mr. Steel?

24 A He asked for second mortgage every week.
25 Finally my wife understand and my wife said to me, "I

1 gwrn 54

Gustavo Passarelli-direct

2 divorce you if you ever sign a second mortgage to Mr. Healy.

3 Q What did Mr. Steel ask you with regard to that
4 second mortgage?

5 A He was pushing me to show Mr. Steel good
6 faith to have a second mortgage from No. 1 Westchester
7 Avenue, Port Chester, New York.

8 Q From 8626 Realty Corporation?

9 A Yes.

10 Q What did he want you to do?

11 A Sign a second mortgage. He was on my desk all
12 the time.

13 Q Did there come a time that you received a tele-
14 phone call from Mr. Healy telling you something about a
15 loan of \$5000 for 8626 Realty Corporation?

16 A Yes.

17 Q Did he ask you some questions?

18 A Yes, what condition is of 8626. I said the
19 condition is fine.

20 Q Did he ask who the officers were?

21 A Yes.

22 Q What did you tell him?

23 A I am the president of the corporation, Carmine
24 Liberatore is the vice president.

25 Q Are you sure of that?

1 gwrn 55

Gustavo Passarelli-direct

2 MR. WEINBERG: Objection.

3 A Positive.

4 Q Did there come a time that you saw, prior to
5 the granting of the 8626 Realty Corporation loan, did there
6 come a time you saw Carmine Liberatore?

7 A Yes.

8 Q Where did you see him or meet with him?

9 A I used to see Buddy once a week for dinner, every
10 single week for ten years, a couple of times a week, three
11 times a week meet and drink or just conversation. But
12 dinner once a week for ten years.

13 Q Just prior to the --

14 A In White Plains Hotel.

15 Q Just prior to the placing of the loan --

16 A I met him at the White Plains Hotel.

17 Q And then from there where did you go?

18 A To a place in White Plains on the Post Road
19 near the Roger Smith Hotel. It is the Indian Restaurant.

20 Q While you were having dinner with him or drinking
21 with him, what did you say to him and what did he say to you?

22 A I told Buddy, I explain the situation, and I
23 said -- I told him about Mr. Healy and I said, "Can I use
24 your name as a vice president in the corporation?"

25 He said to me, "I don't care what you do. I

1 gwrn 56

Gustavo Passarelli-direct

2 can't afford to be buried any more. My ex-wife buried me,
3 my brothers buried me. As long as it won't cost me anything,
4 do anything you want."

5 Q What happened the following morning? Did you
6 speak to Mr. Healy?

7 A Mr. Healy came out to my office.

8 Q Did you give him anything?

9 A Give him information. I give him a financial
10 statement. The financial statement on 8626 is the same as
11 the Westchester Avenue Marina except in the back of the
12 statement should be one page or a page and a half, I don't
13 know for sure, that shows all the details, the assets and
14 liabilities for 8626 Realty Corporation. In the back of
15 the Westchester Avenue statement.

16 Q In other words, it was two separate statements
17 but they were annexed together?

18 A Consolidated into one.

19 Q Did Mr. Healy ask you about any financial
20 information for 8626 Realty Corporation?

21 A Yes, and I did give that.

22 THE COURT: Why don't we take a ten-minute
23 recess.

24 (Recess)

25 Q Mr. Passarelli, I show you what has been marked

1 gwrn 57

2 in evidence as Government's Exhibits 4 and 5, which are
3 financial statements purportedly of Carmine Liberatore, and
4 ask you whether you signed Mr. Liberatore's name to these
5 two documents.

6 A Yes, I did.

7 Q Where did you receive -- from whom did you
8 receive these documents?

9 A Mr. Healy.

10 Q And when you signed these financial statements,
11 what was the condition of the form?

12 A When I signed, it was a complete blank. I asked
13 Mr. Healy, "The corporation is borrowing money, not
14 Liberatore." I said, "I don't want to get killed by
15 Liberatore."

16 THE COURT: Answer the questions. Listen to
17 the questions.

18 THE WITNESS: I am sorry.

19 Q Prior to obtaining a loan for 8626 Realty
20 Corporation, had you ever seen Government's Exhibits 4 and 5
21 filled out?

22 A No, I didn't.

23 Q Did you give Mr. Healy the information that
24 appears on those statements?

25 A No, I didn't.

1 gwrn 58

Gustavo Passarelli-direct

2 Q Did Mr. Healy tell you what he was going to do
3 with that statement when you signed Mr. Liberatore's name?

4 A No, he didn't.

5 Q Did you ever receive an application for loan
6 forms filled out in the name of Carmine Liberatore?

7 A I don't understand, Mr. Berger.

8 Q Did you ever see an application where Carmine
9 Liberatore personally made application for a loan to the
10 Barclay's Bank?

11 A Not Barclay's Bank, no, but I did see Mr.
12 Liberatore's credit application a couple years before, yes,
13 because I used to finance a car for him.

14 Q Did you ever see one in September or October,
15 1975?

16 A No.

17 Q Did Mr. Healy tell you that he was going to
18 prepare a financial statement for Mr. Liberatore?

19 A No, he didn't.

20 Q Did you sign an application for a loan for 8626
21 Realty Corporation?

22 A That's what I thought it was, yes.

23 MR. BERGER: May I have Government's Exhibit 7?

24 (Handed to Mr. Berger.)

25 Q I show you what has been marked Government's

Gustavo Passarelli-direct

gwrn 59

Exhibit 7 in evidence and ask you whether you signed the name Carmine Liberatore to this Barclay's note?

A Yes, I did.

Q And on the back of the note as the personal endorser, did you sign your name?

A Yes, I did.

Q With regard to Westchester Avenue Marina, did there come a time in October of 1975 that Westchester Avenue Marina borrowed \$5000?

A Repeat your question, please.

Q Did there come a time in October of 1975 that Westchester Avenue Marina, Inc. borrowed \$5000 from the Barclay's Bank?

A Yes, it did.

Q Did you have any conversations with Mr. Healy prior to obtaining this loan?

A Yes.

Q Approximately how long before the loan was made did you have a conversation with Mr. Healy?

A About three days before he convince me to get this loan.

Q What did you say to Mr. Healy and what did he say to you?

A He asked me to sign the mortgage again for Mr.

1 gwrn 60

Gustavo Passarelli-direct

2 Walter Steel and I say, "I'm not going to sign."

3 He said, "I give you another loan to Westchester
4 Marina."

5 I said, "No."

6 He said, "Please."

7 I said, "I don't care, I will get money through
8 some other place."

9 He said, "I will pay you all this loan. will
10 you sign the mortgage for Mr. Walter Steel?"

11 I say, "Yes, after you pay all the notes to
12 Barclay's Bank or I pay the notes to Barclay's Bank, one
13 or the other."

14 Q Prior to obtaining the loan for Westchester
15 Marina did you give any document to Mr. Healy?

16 A I gave him a financial statement, also again it
17 was combined two corporations, Westchester Avenue Marina
18 and 8626 Realty Corporation.

19 MR. BERGER: May I have Government's Exhibit 9?

20 Q I show you what has been marked as Government's
21 Exhibit 9 in evidence, the financial statement for West-
22 chester Avenue Marina, and I ask you if that is the finan-
23 cial statement you gave to Mr. Healy?

24 A Yes, but not complete. It is missing something.

25 Q Do you recall signing an application as president

1 gwrn 61

2 of Westchester Avenue Marina for a loan for that corporation?

3 A Yes.

4 Q You do recall that?

5 A If I did, I got to look and see.

6 Q Do you remember doing that?

7 A I do not recall. I have to see first.

8 Q Do you recall signing a note in the sum of
9 \$5000?

10 A No, sir, I have to see.

11 Q Did Westchester Avenue Marina receive a \$5000
12 check?

13 A Yes, they did.

14 Q What did you do with that check?

15 A I deposit.

16 Q In what account?

17 A At the bank. I don't recall which one.

18 Q Between October 27, 1975, and November 26, 1975,
19 did Westchester Avenue Marina make any payment on that loan?

20 A Yes, they did.

21 Q How much?

22 A Repeat the question, please.

23 Q Between October 27, 1975, and November 26, 1975,
24 did you make any payments on the Westchester Avenue Marina
25 loan?

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Gustavo Passarelli-direct

1

2

A Yes, I did.

3

Q How much?

4

A \$1000 plus interest.

5

Q Then after you made that payment, what did you

6

do?

7

MR. BERGER: Withdrawn.

8

May I have Government's Exhibit 11.

9

(Handed to Mr. Berger.)

10

Q I show you what has been marked in evidence as

11

Government's Exhibit No. 11, which is a Barclay's Bank

12

note dated November 26, '75, in the sum of \$4000, and ask

13

you whether it has your signature as president of Westchester

14

Avenue Marina?

15

A Yes, it is.

16

Q Did you sign that note?

17

A Yes, I did.

18

Q Will you please look at the back of the note.

19

A Yes, I did.

20

Q You did what?

21

A Sign.

22

Q The back of the note?

23

A Yes.

24

Q You personally endorsed it?

25

A Yes, I did.

1 gwrn 63

Gustavo Passarelli-direct

2 MR. BERGER: May I have Government's Exhibit 12?

3 (Document handed to Mr. Berger.)

4 Q I show you what has been marked in evidence as
5 Government's Exhibit 12, which is a corporate resolution,
6 and ask you whether you signed the name Carmine Liberatore
7 to this document.

8 A Yes, I did, but it is the wrong corporation.

9 Q Where did you get that document? When did you
10 for the first time see that document?

11 A I saw it here the other day.

12 Q Did Mr. Healy give you a corporate resolution
13 form to sign?

14 A On what corporation?

15 Q On any corporation.

16 A It could be.

17 Was it filled out when you signed it?

18 A No. Mr. Healy always in a hurry. Never have
19 time to fill out everything.

20 Q Was Carmine Liberatore the vice president of
21 Westchester Avenue Marina, Inc.?

22 A No way.

23 Q Who was the vice president?

24 A My brother.

25 Q What is his name?

1 gwrn 64

Gustavo Passarelli-direct

2 A Joseph Passarelli.

3 Q Do you recall seeing, prior to the time that
4 you received the Westchester Avenue Marina, Inc. loan, prior
5 to the time that you receive --

6 A What is prior?

7 Q Before you received the Westchester Avenue Marina
8 loan, do you recall signing a corporate resolution in which
9 it was set forth that Carmine Liberatore was the vice
10 president of the corporation?

11 A Yes.

12 Q Was that fact set forth in the corporate
13 resolution at the time you signed it?

14 A I believe it come in before Mr. Healy.

15 Q Did you ever sign a corporate resolution which
16 stated Mr. Liberatore was a vice president of Westchester
17 Avenue Marina?

18 A No.

19 Q With regard to Mr. Carl French, is Mr. French
20 a friend of yours?

21 A Yes.

22 Q How many years do you know him?

23 A Same as Buddy, ten years.

24 Q Did there come a time in November of 1975 that
25 you received a telephone call from Carl French?

1 gwrn 65

Gustavo Passarelli-direct

2 A Yes.

3 Q What did he say to you and what did you say to
4 him?

5 A He say, "Gus, I'm in trouble for something to
6 do with support someplace in Minnesota." He has a girlfriend
7 in Minnesota and he has a child.

8 Q What did he say to you and what did you say to
9 him?

10 THE COURT: Did you hear the question?

11 THE WITNESS: Just a second, your Honor.

12 A He says he is in trouble with the parole office,
13 he is behind in support to child, can I help him out with
14 some money.

15 I said, "I help you out. I shouldn't. I got
16 150 bucks to my name."

17 He said, "I need 1500."

18 I said, "No way. I don't have it."

19 He said to me, "Any way you can get us a loan or
20 something?"

21 I said, "Yes."

22 Q The following day did you have a conversation
23 with Mr. Healy?

24 A Yes.

25 Q What did you say to Mr. Healy and what did he

1 gwrn 66

Gustavo Passarelli-direct

2 say to you?

3 A I told Mr. Healy, "Carl in and out used to work
4 for me quite a while and every time I asked him to do some-
5 thing for me he is always there, especially in the wintertime.
6 He need a loan. Can you help him out. But if you can get
7 \$5000, Carl owe me quite a big money, he is going to pay me
8 some money back."

9 He said, "Fine."

10 So I call him up.

11 Q At that time did you know whether Carl French
12 was working? Was he employed?

13 A To my knowledge at that time I think he was
14 working as a bartender. I don't know if it was the Roger
15 Smith Hotel or Villani Restaurant.

16 He was doing bartender work and twice a week
17 go to the auction and pick up some cars.

18 Q What did Mr. Healy tell you to have Mr. French
19 do, if anything?

20 A Go to White Plains, Mamaroneck Avenue, Barclay's
21 Avenue branch, pick up an application for a personal loan.

22 Q After Mr. Healy told you that, what did you do?

23 A I told Carl that.

24 Q Did Carl bring you an application?

25 A Yes.

gwrn 67

Gustavo Passarelli-direct [679]

1

2

Q Who was present when he brought the application?

3

A Mr. Healy was there but did not talk to Mr.

4

Carl French at that time. But he was there.

5

Q There was no discussion between them?

6

A No, sir.

7

Q Was the application signed at that time?

8

A By Carl French, yes.

9

Q Do you know if it was filled out?

10

A I did not see it at all.

11

Q How do you know whether it was signed?

12

A I assume it was signed.

13

Q You can't assume? Do you know if the application

14

was signed?

15

A I did not see with my eyes, no.

16

Q Carl dropped the application off?

17

A Mr. Healy took it.

18

Q That you saw?

19

A Yes.

20

Q You saw him take it?

21

A Yes.

22

Q And he left?

23

A Yes.

24

Q What happened the following day?

25

A A day or two days, Mr. Healy told me he misplaced

1 gwrn 68

Gustavo Passarelli-direct

2 Mr. Carl French's application, "Can you get ahold of Carl
3 and get another application?"

4 Q What did you do?

5 A I called Carl. Carl was not home. I no
6 remember if Tom Power answer the phone or Carl's sister. I
7 do not recall. I don't remember. But I left a message for
8 Carl to call me back.

9 Q Did he call you back?

10 A Not the same day.

11 Q What happened after that?

12 A Next day again Mr. Healy also in my office and
13 I said, "Leave me try and see if I can get ahold of him. It
14 is hard to get ahold of Carl."

15 So I can try and I got ahold of Carl. He was
16 sleeping.

17 Q After you spoke to Carl --

18 A I said, "Carl, Mr. Healy lost the application,"
19 and he said --

20 THE COURT: Listen to the question.

21 THE WITNESS: I am sorry.

22 THE COURT: After you spoke to Carl -- I don't
23 know what the question is.

24 Q After you spoke to Carl did Mr. Healy have a
25 conversation with him?

1 gwrn 69

Gustavo Passarelli-direct

2 A I put Mr. Healy on the phone and the two have
3 a conversation direct.

4 Q Then what happened?

5 A After twenty minutes, a half hour later I saw
6 Carl back at the marina.

7 Q Each exhibit is marked. Look at Exhibit 15-A,
8 which is an application which was signed with the name Carl
9 French.

10 Did you sign the name Carl French?

11 A No, I didn't.

12 Q Did you sign the name Carl French on Exhibit 15?

13 A No, I didn't.

14 Q Looking at Exhibit 17, which is the promissory
15 note, did you sign the name Carl French in the front of that
16 note?

17 A No, I didn't.

18 Q Did you sign the name Carl French on the back
19 of that note?

20 A No.

21 Q Look at Exhibit 16, which is the check.

22 Did you sign the name Carl French on the back
23 of that check?

24 A No.

25 Q That check is for how much money?

1 gwrn 70

Gustavo Passarelli-direct

2 A \$5000.

3 Q Did you receive any of the proceeds of the loan
4 to Carl French? Did you receive any of that money from
5 that check?

6 A Yes, I did.

7 Q How much?

8 A I let Carl sign the check and my wife went to
9 the bank and she cash. I say I got between 2800 to 2900.

10 Q That you received?

11 A He owe me \$3200 I pay Barclay Bank a year ago,
12 plus he owe me some more. He owe me about \$8000, Carl
13 French, all told, but I took closer to \$3000. Put it that
14 way. He's got about \$1400, Carl. He need it for the
15 support. I deducted 150 I gave to him plus I give him
16 1400.

17 Q With regard to Tom Powers, did there come a time
18 in November of 1975 that Carl French discussed a loan with
19 you for Tom Powers?

20 A What date?

21 Q November, 1975.

22 A Yes, he did.

23 Q What did Carl French say to you?

24 A I thought he was joking but he was serious.

25 MR. WEINBERG: Your Honor, it would be better if

1 gwrn 71

Gustavo Passarelli-direct

2 we just have the conversation.

3 A He said, "Gus, you in trouble, I am in trouble.
4 I need some money. Do you know Tom Power?"

5 "Yes."

6 "Can I get a loan with Tom Power if Tommy will
7 help me and sign," or something he said.

8 I said, "I'll find out."

9 Q Was there any discussion between you and Mr.
10 French with regard to you putting up a boat as collateral
11 for Mr. Powers?

12 A No that time. Not that particular time.

13 Q Did any such discussion ever take place?

14 A Yes.

15 Q When did that discussion take place?

16 A I do not recall the time. I know there was a
17 discussion. Healy -- I do not recall perfect that conver-
18 sation. I believe Mr. Cleary come in and I said, "Yes, he
19 can have any boat he want for collateral, any one."

20 I did not deny.

21 Q Did you ask for anything for putting the boat
22 up as collateral?

23 A What do you mean?

24 Q Any money.

25 A I did ask Carl for some money. I asked him what

1 gwrn 72

Gustavo Passarelli-direct

2 he is going to do with the loan. He said, "I needed some."

3 I said, "The only way I will do that, you owe me
4 quite a bit. If you pay me back right now, you pay me back.
5 Someday if you need again, I will lend again. I will put up
6 a boat for collateral."

7 He said, "No problem because I owe you the
8 money, Gus."

9 Q Did this conversation about putting up the
10 boat as collateral occur prior to the time Tom Powers got
11 the money?

12 A I do not understand the question.

13 Q Did the conversation with regard to putting up
14 a boat for collateral happen before Powers got the money,
15 before the Powers check was issued?

16 A Like I said before, I can't remember really
17 perfect on that damn thing. I can't remember perfect on the
18 thing at all, Mr. Berger.

19 Q You have Government's Exhibit 23 in evidence
20 before you, which is an application. Did you ever read
21 that application?

22 A No, I didn't.

23 Q You have Government's Exhibit 24 before you,
24 which is a note and security agreement. Did you ever read
25 that note or security agreement?

1 gwrn 73

2 A No, I didn't.

3 Q You have Government's Exhibit 25 before you,
4 which is a check in the amount of \$5000. Did you deposit
5 this check in the account of Westchester Avenue Marina?

6 A Yes, I did.

7 Q On back of that check does the name Thomas
8 Powers appear?

9 A Yes.

10 Q Did you see anyone sign that name?

11 A I give it to Carl. I don't know what he did.

12 Q Did you see anyone sign the name?

13 A No, I didn't.

14 Q What happened to the proceeds of that check?
15 What happened to the money from that check?

16 A Carl gave me \$2000 pay back to me. Carl used
17 \$2000 to pay his debt, \$200 went to Tom Power, \$300 went
18 to Mr. Healy.

19 Q Did anything happen between you and Healy after
20 the Powers loan?

21 A Yes.

22 Q What happened?

23 A Mr. Healy and I had a big argument. He say it
24 was pretty hard and pretty tough to get a loan for somebody
25 who didn't even have a job. He say he recommended so high

1 gwrn 74

Gustavo Passarelli-direct

2 with no job and everything else, he's got the money. He say
3 for all the work he done, he wouldn't touch unless he got
4 an additional fee.

5 I said to him, "Here is your \$4200. Run as
6 fast as possible. Run and pay off the loan to Tom Powers."

7 That is the honest to God truth.

8 Q With regard to Westchester Used Cars, Inc., did
9 you ask Healy to apply for that loan for you?

10 A No, Healy ask me because again he wanted
11 mortgage signed for Mr. Steel. He said a guy is going to
12 give him \$20,000 to give me and for me to sign a second
13 mortgage for the marina to him. I said, "Fine. You show
14 me that \$20,000 and we pay Barclay's Bank."

15 So he convince him and we did it and I said,
16 "Fine, get that \$20,000, bring it to Barclay's Bank, clean
17 all my loan and I give you the second mortgage. It is here
18 ready to be signed."

19 He said, "Fine."

20 So again I sign something. I didn't sign
21 anything for Westchester Auto. I don't know how he get it.

22 Q Did you sign an application?

23 A No. Believe me. I don't know how the heck the
24 guy was doing. I don't know.

25 Q Did you sign a financial statement? Did you

1 gwrn 75

Gustavo Passarelli-direct

2 submit a financial statement?

3 A No, sir, not at all. I don't even give him a
4 list of the cars of the corporation, I did not give him
5 nothing at all because the corporation was a brand new
6 corporation.

7 THE COURT: Mr. Passarelli --

8 THE WITNESS: I am sorry.

9 THE COURT: Don't be sorry. Just listen to
10 the questions.

11 MR. BERGER: Your Honor, may I have five minutes.

12 THE WITNESS: I'm all right.

13 Q Mr. Passarelli, I show you what has been marked
14 as Government's Exhibit 27 in evidence, a \$5000 note made
15 out by Westchester Avenue Used Cars, Inc. and signed with
16 the name Gus Passarelli. I ask you whether you signed the
17 front of this note and the back of that note?

18 A Yes, I did.

19 Q I show you what has been marked as Government's
20 Exhibit in evidence 28, which is a check, bank money order,
21 from Barclay's to Westchester Used Cars, Inc. in the sum of
22 \$5000 and ask you whether you deposited this check in the
23 account of Westchester Avenue Used Cars.

24 A Deposit in Westchester Avenue Marina, yes.

25 Q What, if anything, did you do with the money

1 gwrn 76

Gustavo Passarelli-direct

2 from that check? Take it slow. What, if anything, did you
3 do with the money from that \$5000 check?

4 A Mr. Healy first took \$3000 and said he was
5 going to deposit for me to a different account, open an
6 account for me in the Marine Midland in Mamaroneck. He
7 never did.

8 Next day he came over and took another \$400. He
9 said he has to pay the telephone call. He said, "I give
10 it back to you tonight."

11 He never did. He never deposited money, never
12 opened account for me in the Marine Midland.

13 Q With regard to the Giuseppe Passarelli loan in
14 November, 1975, did you have a conversation with Mr. Healy
15 and ask him whether he could obtain a \$5000 loan for your
16 brother?

17 A Some gentleman by the name of Mr. Albert Miller
18 was supposed to purchase my property on the foreclosure and
19 I was going to trust him to give it to me back. It was all
20 arranged.

21 MR. WEINBERG: I am sorry. Could we have a
22 conversation if this is part of one. I want to follow it.

23 THE COURT: You want to take a recess?

24 THE WITNESS: It is all right.

25 THE COURT: Are you all right?

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THE WITNESS: Fine.

MR. BERGER: I will ask the question again.

Q In November, 1975, did you ask Mr. Healy -- did you have a conversation with Mr. Healy with regard to obtaining a loan for your brother?

A Yes. He say, "What's going on tomorrow morning."

I said, "I am going to lose, you are going to lose. Mr. Albert Miller is going to purchase the property tomorrow morning in the court house in White Plains."

Mr. Healy said he can't doublecross Walter Steel. He said, "Hold on. I will get some money."

Q Prior to that, had you had a discussion with your brother Giuseppi with regard to obtaining some money?

A He asked me, "How is your brother? I see your brother Pepe all the time. He got good credit at Barclay's Bank."

I said, "Yes."

I said he have a couple right now. That take money out each week.

The next morning he said to me, "I meet you 9 o'clock at the court house."

He come over and he have two \$5000 checks, one made out to himself, one to my brother Joseph, and he said, "We are going to save that property. Don't worry about it."

1 gwrn 78

Gustavo Passarelli-direct

2 So I turned around and told Mr. Miller, "Don't
3 step in at all."

4 So my brother, he asked some questions to my
5 brother, I no remember that day either myself.

6 Q Where did this take place?

7 A In the court house, in the lobby on the first
8 floor.

9 Then I said to him, "I don't want the other
10 \$5000."

11 I swear to God, I said, "Bring it back to
12 Barclay's Bank. I have money. I have 5000 myself. We only
13 needed \$99 and \$125 to the judge. Judge Galgano. I think
14 it is right here. No, it is a different check. So I only
15 use one, my brother's. I did not use Mr. Healy's check.

16 Q The day before you went to the court house, did
17 you and your brother have a conversation with regard to
18 your needing \$5000 or more?

19 A Yes.

20 Q What did you say to your brother and what did
21 your brother Giuseppe say to you?

22 A I told my brother, I don't believe if we can
23 trust anybody any more, if we can trust Miller or we can
24 trust Healy. I said, "Pope, I just give up. I can't take
25 any more. My nerves are shot."

1 gwrn 79

Gustavo Passarelli-direct

2 He said, "Gus, show me where I can borrow some
3 money and I sill sign for you."

4 He said, "I will sign my home, anything."

5 He said, "Let's try and save it."

6 Q Did your brother obtain a \$5000 loan from
7 Barclay's Bank?

8 A Yes, he did.

9 Q I show you what has been marked in evidence as
10 Government's Exhibit No. 22, which is a bank money order in
11 the sum of \$5000 made payable to Joseph Passarelli, November
12 13, '75, and ask you have you ever seen this check?

13 A Yes, I did.

14 Q When was the first time you saw it?

15 A That morning in the court house, November 13.

16 Q Is there a signature on the back of the check?

17 A Pay to the order to Louis Galgano, as judge, and
18 signed Joseph Passarelli.

19 Q Your brother gave you that check?

20 A Yes, he did.

21 Q In January of 1976, did you meet with any
22 officers of the Barclay's Bank at the Barclay's Bank?

23 A The first time I met an officer of the Barclay's
24 Bank was December 22.

25 Q Of what year?

1 gwrn 80

Gustavo Passarelli-direct

2 A 1975.

3 Q Who did you meet?

4 A Mr. Cleary. He come in. He was very nervous.

5 I never met the man before.

6 MR. WEINBERG: Your Honor, if this is about the
7 repayment of the loans, I would object.

8 THE WITNESS: No, it was not just the repayment
9 of the loan.

10 MR. BERGER: Your Honor, I would like to make an
11 offer of proof as to relevancy on the issue of intent to
12 injure or defraud.

13 THE COURT: Obviously you may make an offer of
14 proof. I think that has been a source of disagreement
15 between this side of the bench and the other side. I agree
16 with the government. I don't think that that is relevant.
17 So I will sustain the objection.

18 Q Is the loan to Westchester Avenue Marina by the
19 Barclay's Bank fully paid?

20 A Yes.

21 THE COURT: Mr. Berger, please do not do that.
22 You know what my rulings are. Do not do that.

23 MR. BERGER: Your Honor, at this time I will
24 only state that I have a group of questions going to that
25 issue which I would be pleased to submit to the Court, if the

* * *

* * *

[730]

1 gwrn 118

2 in part. The request on offers to repay is rejected and
3 the request on advice of counsel is rejected.

4 The government's requests. 1 and 2 in substance.
5 I would not use your illustration. 3, 4 and 5 in substance.
6 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 --

7 MR. WEINBERG: Your Honor, you will be giving
8 18. I ask that because it will affect my summation.

9 THE COURT: I am going to give 18 -- you asked
10 for a Pinkerton charge?

11 MR. WEINBERG: That's right.

12 THE COURT: Yes. 20, 21.

13 MR. WEINBERG: You will give 19, too? I raise
14 these only because it will affect my summation.

15 THE COURT: Of course.

16 MR. WEINBERG: The language the government
17 states.

18 THE COURT: Yes, yes, the last paragraph, yes.
19 I think you are entitled to that. 20, 21, 22, 23, 24, and
20 then the miscellaneous requests except for the one about
21 uncalled cumulative witnesses. I do not see any purpose
22 in that. The rest of those in 25 are granted.

23 There is a supplemental request.

24 MR. WEINBERG: It is really that the government
25 or the indictment reads with the word "and," the conjunctive,

* * *

[749]

1 gwrn 11 Gustavo Passarelli-cross

2 correct? I think it is a simple question, Mr. Passarelli.

3 A Yes, it was in the account, yes.

4 Q And the loan from Barclay's Bank for Westchester
5 Avenue Used Cars, that went into the account of Westchester
6 Avenue Marina; is that correct?

7 A Yes, it was.

8 Q You knew that these loan proceeds were coming
9 from Barclay's Bank; isn't that correct?

10 A Yes, I know.

11 Q You paid Mr. Healy a certain amount of money to
12 arrange for these loans; isn't that correct?

13 A As a lawyer's fee.

14 Q Mr. Passarelli --

15 A Yes.

16 Q -- did you pay Mr. Healy money to arrange the
17 loans at the Barclay's Bank?

18 A Yes, I did.

19 Q And at the time you knew that your bank account
20 at Barclay's Bank had been closed; isn't that correct?

21 A Yes, it was.

22 Q And you knew at the time that your floor planning
23 arrangement at Barclay's Bank had been terminated, had been
24 closed; isn't that correct?

25 A Yes, it was.

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1 gwrn 12

Gustavo Passarelli-cross

2 Q And you knew that you could not go into the
3 Barclay's Bank and obtain a loan yourself; isn't that
4 correct?

5 A No.

6 Q That is not correct?

7 A No.

8 Q And you knew, did you not, Mr. Passarelli, that
9 in order to obtain these loan proceeds Mr. Healy had to be
10 filing false loan applications with Barclay's Bank?

11 A No.

12 Q You didn't know that?

13 A No.

14 MR. WEINBERG: No other questions, your Honor.

15 THE COURT: Mr. Berger, do you have anything
16 else?

17 MR. BERGER: Yes, your Honor.

18 MR. MURPHY: Your Honor, may I have one question
19 as well?

20 THE COURT: Yes.

21 CROSS EXAMINATION

22 BY MR. MURPHY:

23 Q Mr. Passarelli, when you told Special Agent
24 Conforti that Healy, the attorney, had told you that the
25 bank officer was receiving monies for making a loan, did you

* * *

1 gwrm 19

2 MR. WEINBERG: Nothing else, your Honor.

3 THE COURT: I will excuse the jury for a short
4 time.

5 (Jury leaves the courtroom.)

6 THE COURT: I suppose you ought to make your
7 record complete and then we will go into summation.

8 MR. MURPHY: On behalf of the defendant William
9 Cleary I move for a directed verdict of acquittal on each
10 of the counts with which he is charged on the ground on the
11 evidence no reasonable man or reasonable jury could find beyo
12 a doubt as defined in law Mr. Cleary guilty of each of
13 those counts or any one of them. I refer to the argument
14 that I made when the government rested on its direct case
15 for supporting legal authorities and I move for such a
16 verdict by your Honor.

17 THE COURT: The motion is denied.

18 MR. BERGER: Your Honor, the defendant Passarelli
19 moves for a directed verdict of acquittal on each and
20 every count due to the fact that on the evidence no
21 reasonable man could find him guilty beyond a reasonable
22 doubt.

23 THE COURT: The motion is denied. I am going
24 to call the jury back and you can --

25 MR. WEINBERG: Your Honor, could I go outside

1 gwrn

2 MR. MURPHY: If that is your comment on the law,
3 why haven't you granted my motion to dismiss?

4 MR. BERGER: Your Honor did not give my requested
5 instruction on materiality with regard to counts 9 through 12.

6 THE COURT: I think that when we were talking
7 in here I thought you had withdrawn it because the statute
8 said nothing about material.

9 MR. BERGER: The Assistant U.S. Attorney did not.
10 The indictment says material, uses the word material, and
11 the case law states that the materiality of the statement is
12 to be taken into consideration with regard to the intent to
13 influence. I have a couple of cases with me, none too great,
14 as usual. One case is the case of United States v. Kernodle,
15 which is 367 Fed. Supp. 844, a 1973 case. I think it is
16 out of the District Court in North Carolina. It states:

17 "Any requirement in the prosecution for making
18 a false application to a federally insured bank that the
19 false statements be material goes to show defendant's intent
20 to influence and mislead. It doesn't mean it must be of a
21 nature to make the bank rely. All that is necessary is that
22 the statement have the capacity to influence" --

23 THE COURT: I think I have charged that suffi-
24 ciently in my charge. I have charged that sufficiently. I
25 just have not used the word "material," but I have charged

REQUESTED INSTRUCTION: MATERIALITY

REQUEST NO. 41 A

"MATERIALITY"

In order to determine whether any statement is false as to a material matter, you must decide whether the statement was false and whether the statement had a natural tendency to influence or was capable of influencing the decision of the person or institution to whom submitted in making a determination required to be made.

Passarelli Requested Instruction

REQUESTED INSTRUCTION: OFFER TO REPAY BEARING
ON INTENT TO INJURE AND DEFRAUD

REQUEST NO.

Offer To Repay Bearing On Intent
To Injure and Defraud.

Wilfull misapplication presupposes a fraudulent intent to injure and defraud the bank which the government must prove in order to convict a defendant. An offer by the defendant to pay, settle or achieve a compromise regarding the money in question bears upon whether a defendant had the requisite intent to injure and defraud the bank.

JUDGMENT OF CONVICTION

United States of America vs.

United States District Court for

GUSTATO PASSARELLI

SOUTHERN DISTRICT OF NEW YORK

DEFENDANT

DOCKET NO. 76 Cr. 986 R.L.C.

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
2	24	77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

MORTON BERGER ESQ

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,☒ NOT GUILTYFINDING &
JUDGMENTThere being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged☒ GUILTY to counts 1, 7, 8, 9, 10, 11, 12.

Defendant has been convicted as charged of the offense(s) of CONSPIRACY to obtain loans from a bank by means of false statements. (Title 18, United States Code, Section 371). unlawfully and knowingly abstracted and misapplied monies of said bank after loans had been approved and authorized. (Title 18, U.S. Code, Section 655 & 2). unlawfully, wilfully, and knowingly made false statements of material facts upon application for loans for the purpose of influencing the action of the Barclay Bank of New York. (Title 18, U.S. Code, Section 655 & 2).

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period ~~XX~~

Imposition of sentence is suspended on count 1. TWO(2) YEARS imprisonment on counts 7, 8, 10, and 12, to run concurrently with each other, and on the condition that the defendant be confined in jail type institution for a period of SIX(6) MONTHS, the execution of the remainder of the sentence is hereby suspended. The defendant is also placed on probation for a period of ONE HALF(1 1/2) YEARS, subject to the standing probation order of this Court, and the defendant is FINED \$2500.00 and collars on count 7 fine is to be paid in installments arranged through the probation department. Bail Pending Appeal is fixed at \$10,000 unsecured personal recognizance bond.

SPECIAL
CONDITIONS
OF
PROBATIONADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation, it is hereby ordered that the reverse side of this judgment be imposed. The Court may at any time during the probation period or within a maximum probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

ROBERT L. CARTER

Date February 24, 1977

CERTIFIED AS A TRUE COPY ON

THIS DATE

BY

CLERK

DEPUTY

Entered on Docket 2-25-77

27

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss .

Murray H. Berman, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 311 W 97th St
New York NY 10025.

That on the 3RD day of JUNE, 1977,
deponent personally served the within APPENDIX

upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

By leaving 1 true copies of same with a duly
authorized person at their designated office.

~~By depositing true copies of same enclosed
in a postpaid properly addressed wrapper, in the post office
or official depository under the exclusive care and custody
of the United States post office department within the State
of New York.~~

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses

ROBERT B. FISKE JR.
UNITED STATES ATTORNEY
ATTORNEY FOR PLAINTIFF-APPELLEE
ONE ST. ANDREWS PLAZA
NEW YORK, N.Y. 10007

Sworn to before me this

3rd day of June, 1977
Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Queens County
Commission Expires March 30, 1979

Murray H Berman